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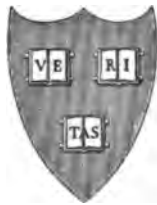
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<sup>x</sup>  
NEW EDITION<sup>c</sup>  
OF THE  
BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and  
Translated into English

BY  
MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA METZIA  
(MIDDLE GATE, PART II.)

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### EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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LEONARD LEWISOHN, Esq.

THIS TRACT—BABA METZIA (Vols. XI. AND XII.)—WHICH TREATS OF ZEDAKAH  
(JUSTICE-CHARITY) AND MISHPOT (JUDGMENT), IS MOST  
RESPECTFULLY DEDICATED

BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

New York, in the month Ziv 5661, April 25, 1901.



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# SYNOPSIS OF SUBJECTS

## OF

# TRACT BABA METZIA (MIDDLE GATE).

### CHAPTER V.

MISHNAS I. TO IV. What is considered usury, and what increase? Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? A small liquid measure one shall not fill up in a manner to make foam. Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? Usurers are equalled to shedders of blood. "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to, etc.). One must not fix a price on fruit before the market prices are announced. The many things which may be done in a sale, but not in a loan, as they may appear usurious. The rule of usury in transactions is: If one sells the article cheaper because it is not yet in his possession, etc. If one has returned robbed money with an account of other money he had to give, he has done his duty. A lender must not dwell in his debtor's house "for nothing," or even for decreased rent. Hiring may be increased, but not sale. How so? One is allowed to increase the price of an article when the money is to be paid at a certain time after delivery (provided he does not say: "If for cash, you will have it cheaper"). There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only. Stipulations which may or may not be made in selling real estate. What is to be considered gossip. Does an *asmakhta* (for definition see p. 160) give title or not? There was a man who sold an estate with the security of his very best estates, finally they were overflowed. Is usufruct considered direct or indirect usury? In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law, etc. A scholar, however, must not do even this. From pledged estates a creditor of the lender has no right to collect in case he dies. Also a first-born of the lender cannot claim the double amount prescribed to him biblically. If the borrower say to the lender: Stop using the fruit, etc. The different customs in pledging real estate at Papuna, Mehusa, Narsha. Why a pledge is called *mashkhantha* . . . . . 145-166

MISHNAS V. TO XI. The law about giving money or articles for half profit. The proper payment for raising cattle. Why R. Papa decided differently in the cases of the Samaritans who appeared before him. R. Hama used to rent zuzes daily for the smallest coin for each zuz and he lost his money. All animals which are laboring for their food may be appraised, that the increase shall be divided equally. One may say to a farmer: I shall give you twelve kur of grain instead of the ten you demand, if you will lend me some money to manure your field. One may rent a boat on the condition that should it break he shall be responsible. One may say: I take your cow for the price of thirty dinars in case it should die, etc. May money belonging to orphans be lent for usury or not? One who lends money for a business which is very likely to bring profit with little chance of loss is wicked; for one which is likely to bring loss and far from profit, is pious, etc. An iron sheep must not be accepted from an Israelite, etc. (for explanation see Mishna VII). An Israelite may lend to his race money belonging to non-Israelites for usury, etc. The interpretation of verse 8, Prov. xxviii. The meaning of verse 24, Ex. xxii. He who takes usury will lose all his possessions. What is to be done with the usury promised by or to a heathen, after he has been proselyted. A note in which usury is mentioned the lender must not be allowed to collect even the principal, which he must forfeit as a fine. Articles for delivery during the year must not be bought for a certain price before the market price is fixed. If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell to him at the price of the place he intends to go to, etc. What Samuel ordered the grain dealers, who used to advance money for grain to the farmers, to do. Also the order of Rabha to the watchmen. Are the rabbis consuming "usury" by paying in *Tishri* for the wine they will choose in *Teveth* when it is already in good condition? I call your attention, master, to the rabbis, who pay head-tax charges for those who cannot pay them, etc. Seuram used to compel doubtful characters to carry the palanquin of Rabha. If one of a company of three partners has given money to a messenger to buy something, it is to be considered as for the company, and not as for himself. If the grain was to be finished with two kinds of labor only, one may fix the price, but not if he require three kinds of labor. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law, in the meantime the value of the equipment was reduced, etc. One may lend his gardeners wheat to be returned in the harvest-time the same measure, etc. (for meaning see p. 184). Hillel (the First) says: A woman must not lend a loaf of bread to her neighbor unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf (of the same quality) will appear usurious. The Hala-kha, however, does not so prevail. One may say to his neighbor: Help me in weeding or digging to-day and I will help you on some other day, etc. There is a kind of usury which may be called preceding usury, and another kind which may be named succeeding usury. How so? If one owes his neighbor money and it was not customary for him to greet him first, before the loan, he must not do so after the loan took place. If one is aware that his debtor has nothing with which to pay he must not pass him by. There are three who cry for help and are not heard . . . . 166-187

## CHAPTER VI.

MISHNAS I. TO IV. He who hired day laborers and they deceived one another, there is nothing but resentment, etc. (see p. 189). Whoever changes his words or retracts them has to suffer for the injury caused. The rabbis hold that the laborers have always the preference. R. Dossa, however, holds that the employer has the preference. Said Rabh: The Halakha prevails in accordance with R. Dossa. Did Rabh indeed say so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, and the seller retracts, etc. As to whether a deposit gives title or not Tanaim differ in their opinions in pages 193-4. How a Bill of Sale must be written according to R. Simeon b. G. Payment in installments is valid, though it was not so stipulated. If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal (in both ways), the hirer is responsible for an accident. Who is responsible for an *anguria*? (See p. 195.) If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, etc. If one hires a boat and it sinks in the middle of the way. If one hires a boat for a certain place, and has unloaded it while in the middle of the way. What may or may not be placed upon the ass which was hired for riding only. If one hires an ass to be ridden by a male, the same must not be ridden by a female. If one hires a cow for ploughing on the mountain and he plough in a valley, etc. How is it if the plough-handle breaks, and there has been no change in the agreement, etc.? If one hired an ass to carry wheat and he used it for barley. Which quantity of overloading makes one responsible to the bearing on shoulders, to a skiff, to a larger boat, and to a ship . . . . . 187-201

MISHNAS V. TO VI. All specialists are considered bailees for hire. One may let out a pledge of a poor man and deduct the amount earned from his indebtedness. If one hires a cow, how shall he pay in case it is lost? (See p. 202 for meaning). If one bought utensils from a specialist to send to the house of one's father-in-law, etc. There was a man who sold wine to his neighbor, and the buyer said: I shall carry it to such a place, etc. Guard for me this article and I will guard yours to-morrow; or, I will lend you, or *vice versa*. All are considered bailees for hire, one to the other. The two cases in which R. Papa and Rabha were embarrassed for their decisions and finally it was found that their decisions were correct. If a depositary said: Leave it here "for you," he has no responsibility whatever, but how is the law if he said: Leave it "anonymously"? On a pledge he is considered a bailee for hire. If one carries a barrel from one place to another and breaks it, he must swear that there was no neglect, etc. R. Eliezer was wondering how such a decision could hold good. What shall he swear? I swear that I broke it unintentionally. There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and Rabh commanded Rabba to return their garments and pay them for their labor, for this is the meaning of the verse, Prov. ii. 20 . . . . . 201-208

## CHAPTER VII.

MISHNA I. One cannot compel his employees to come earlier or depart later than is customary at that place, although it was agreed upon. It hap-

pened with R. Johanan b. Mathea, who said to his son : Go and hire laborers for us, etc. Resh Lakish's advice to laborers in general. The legend, how R. Eliezer b. R. Simeon was appointed by the government to capture thieves. He who would like to see a beauty similar to that of R. Johanan shall take a silver goblet just out of the worker's, etc. The legend of R. Johanan with Resh Lakish, and how the latter married the sister of the former, and how the death of both Johanan and Resh Lakish occurred. The continuation of the legend about R. Eliezer, how he accepted chastisements upon himself, how he was kept unburied, in his attic, many years ; how finally he was buried ; what his wife answered Rabbi (the prince) when he asked her to marry him ; how Rabbi has also accepted chastisements, etc., etc. (wonderful legends from 211-219). He who is a scholar himself and his son and grandson are also, the Torah does not depart from their children for everlasting, etc. R. Zera, when he ascended to Palestine, fasted one hundred days in order to forget the Gemara of the Babylonians, etc. Resh Lakish used to mark the caves of the rabbis. R. Zera's dream. Elijah (the Prophet) frequently appeared in the college of Rabbi. (See the whole legend, pp. 222-224.) The Hagadah about Abraham with the Angels ; the names of those Angels. Why did the Lord change Sarah's words when telling them to Abraham ? Until the time of Abraham there was no mark of old age ; until the time of Jacob there was no sickness ; until the time of Elisha there was no one who became cured from sickness. . . . . 208-229

MISHNAS II. TO IX. Who are the laborers who have a right, according to the law of Scripture, to partake of the fruits of their labors ? Whence is all this deduced ? The particular law about muzzling an ox while laboring. How is the law if the animal is sick and the consuming of grain injures it ? May it be muzzled ? When Gentiles steal bulls and castrate them, and return them to their owners, may the Israelites use them or not ? (See footnote, p. 235.) If one has "muzzled" a cow only with his voice, or if one leads two kinds of animals with his voice only, is he guilty or not ? R. Papa and also R. Ashi told in their colleges what they were questioned and decided not in accordance with the existing laws and the reasons. Why the labor of a workingman entitles him to consume the fruit of that with which he is laboring. If one is occupied with pressing dates, he must not consume *grapes*, and *vice versa*. A laborer must not consume more than his wages, etc. Does the Scripture add to his wage the consuming of the fruit with which he is engaged ? Or is it a part of his wage ? A laborer has the right to make a stipulation that he shall not eat what he is entitled to and take money for it instead. Watchmen of fruits are permitted to eat, according to the custom of the country, etc. The following laborers have a right to partake according to the law of Scripture, etc. There are four kinds of bailees : A gratuitous bailee, a borrower, a bailee for hire, and a hirer. For what loss must a hirer pay ? What is the extent of the duty of the bailee for hire ? Abu placed flocks at Rumnia, and Shabu, who was an errant robber, took them away. Although Abu proved that this was the case, R. Na'hman held him responsible, etc. A single wolf's coming among the flock is not considered an accident. A robbery is considered an accident. A natural death is an accident, but not if it is caused by cruelty. A gratuitous bailee has the right to make a stipulation that in case of loss he shall be

freed from taking an oath. A stipulation made contrary to that which is written in the Scripture is of no avail. A bailee for hire may stipulate that he shall be equal to a borrower. But how shall a stipulation of this kind be made verbally, only? . . . . . 230-248

## CHAPTER VIII.

MISHNAS I. TO IV. If one borrows a cow, and at the same time hires or borrows its owner, etc. There are four kinds of bailees, etc. Whence do we deduce all this? How do we know that he is responsible in case of confiscation also? There is no responsibility when the owner works together with the borrowed article. (Expl., see 252.) If one tells his messenger that he shall substitute him in service to his neighbor, together with his cow, how is the law if the cow breaks or dies while laboring? If one borrows another's slave and cow, how is the law? What should a husband who uses the estate of his wife be considered—a borrower or a hirer? If the body of the animal becomes lean because of the labor, how is the law? Maraimar b. Hanina hired mules from Huzai, and the former overworked them, and they died, etc. If one borrowed a cow for half a day and for the other half a day he hires it, etc. If one has borrowed a cow, and the owner sends it to him by his son, slave, or messenger, or even by the same persons of the borrower, and it dies while on the road? If one borrows a hatchet; if he has done some work with it, he acquires title to it for the time borrowed. Is the law concerning an ordinary man equal to that of the sanctuary? If one exchanges an ass for a cow, and it brought forth young. If one possesses two male slaves or two fields, one large and one small, and the buyer claims: I bought the large one, etc. . . . . 249-264

MISHNAS V. TO IX. If one sold out his olive trees for fuel, and there were still bad olives on them. Olive trees which were overflowed, taken out and planted in another's field, etc. If one has planted trees in a field belonging to another without the consent of the owner. If one has rebuilt a ruin of one's neighbor without his consent. If one rents a house (without appointing the time) in the rain season, etc. All the terms are fixed only for giving notice. This notice is to be given by the owner of the house as well as by the tenant. The owner of the house is obliged to give to the tenant a door bolt, a lock, etc. However, things which can be done by any one the tenant has to furnish himself. Whose duty is it to furnish a mezuzah? The manure belongs to the owner, etc. If the year was made a leap year the tenant reaps the benefit of the intercalation. However, if he rented him the house monthly, the intercalation belongs to the owner. In an agreement, which is to be considered, the first expression, or the last? If the renter says: I have paid; and the owner claims: I have not received it, who of them must bring evidence? If one has rented out a house for ten years, and has signed the lease without a date, etc. If a man rents out a house and it falls, etc. . . . . 264-272

## CHAPTER IX.

MISHNAS I. TO IV. One who hires a field must do as it is customary in that country, etc. If the stipulation was made on wine, etc. They must also prepare together the sticks needed for the vineyard for the next year. In Babylon there is a custom that the gardener is not given any straw. If

one hires a field and it was a dry place, or a group of trees, and thereafter the spring ceases to flow, etc. If the hirer told him : Rent to me this dry field, etc. If one has undertaken to work up a field and he has neglected to do so. Mair, Jehudah, Hillel, Jehoshua, and Jose, these considered the language of the common people legal (although it was not in accordance with the enactment of the sages). If one lends money to some one, he has no right to pledge him through the court for more than he owes him. Rabina used to double the amount in the marriage contract, etc. There was one who undertook to work up a field, and he said : Should I neglect, I will give you one thousand zuz, etc. There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy. If one has given articles for business without any stipulation, and took from him two notes, etc. If the gardener did not want to weed the field, saying : I will give you your due, he must not be listened to. . . . 273-279

MISHNAS V. TO IX. If one took a field in partnership and it was not productive. If one hires a field and the locusts destroyed it, or it was burned. If that year was a year of destruction or a year without rain, etc. If this happened once, he has to sow it the second time, etc. If one hires a field for ten kur wheat per annum, and the products are poor. There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. If one takes a field for sowing barley, he must not sow wheat in it, etc. The explanation of Deut. xxviii. 3-6. Thirteen advantages can be gained by taking the early morning meal, viz., etc. Get up early in the morning and eat, in the summer, because of the heat ; and in the winter, because of the cold ? The advices given by R. Jehudah to the land-surveyor about measuring land, trenches, and the space for anchoring. Correct thyself first, and then others. All the inhabitants of the city must contribute to the repairing of the wall of the city if it is destroyed. If one takes possession of a dock, he is a rascal. If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance. To a presented estate the right of preëmption does not apply, etc. To a pledged estate, and if it is sold for taxes, or for the support of a widow, or for burial, this law does not apply. If one hires a field for a few years (less than seven), he must not sow flax in it. R. Papa hired fields for pasture, and some trees sprouted in them, etc. Because you are descendants of frail people, you speak frail words. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, etc. The planter of Rabbinah did damage and was discharged ; and he came to complain to Rabha, etc. There was a planter who said : " Give me what I am entitled to of the improvements, as I want to go to Palestine." There was one who pledged his vineyard for ten years, and it became old in eight years. There was a note in which was written the year without a number, etc. If the gardener claims : " I worked for the half," and the owner says for a third, who should be trusted ? If orphans claim : " We have made the improvements on this estate," and the creditor claims : " It was improved by your deceased father," for whom is it to bring evidence ? . . . . . 279-295

MISHNAS X. TO XIV. If one hires a field for the whole sabbatic season for seven hundred zuz, the sabbatic year is included. A day-laborer has to

collect his money the whole night after that day, etc. The transgression of this commandment comes and ceases with the first morning. One who withholds wages transgresses the commandments of five verses, etc. The commandment: "In the same day you shall give his wage," and also the negative, "There shall not abide . . . until morning," applies to men, cattle, and vessels. To a proselyte who promised not to worship idols and not to commit adultery, but not to conform to other Jewish laws, the commandment applies. One who withholds wages is considered as if he would take out the soul. If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? Is piece-work subject to that law or not? If a creditor has to pledge his debtor, he may do so only by court, etc. If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all to be sold out? If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning [pledging]—what does this mean? If the pledge was returned and the borrower died, etc. One who pledges a nether and upper millstone transgresses a negative commandment and is guilty for two articles. There was a man who pledged a butcher knife from his debtor, etc. . . . . . 295-307

## CHAPTER X.

MISHNAS I. TO VI. If one owns a house, the upper chamber of which belongs to another, and it falls. If the attic was ruined, and the owner of the house declined to repair it. When the tenant goes to dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together? Must the party doing the damage remove the cause of it, or must the injured party remove the cause of the damage? One is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things). A house with an attic, belonging to two persons, which becomes ruined; the owner of the upper chamber requires the rebuilding, and the owner of the house refuses, etc. The same is the case with an olive-press which was placed under a garden, etc. A wall or a tree which falls suddenly on a public thoroughfare and causes damage, etc. What time is fixed for such a case by the court? The same is the case with a laborer who was told by his employer to take the articles with which he was engaged for payment. Whether looking gives title to an ownerless article or not, the Tanaim differ. One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible. When two gardens were placed one above the other, and some herbs were grown between them, the upper one may use that which he can reach with his hand, provided he does not exert himself to reach them. This was reported to the King Sabura. . . . . . 307-316



## TRACT BABA METZIA (MIDDLE GATE),

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### CHAPTER V.

RULES AND REGULATIONS CONCERNING USURY IMPRISONMENT, RENTING HOUSES, INSTALMENTS, LOANS FOR HALF PROFIT, APPRAISING, ETC.

**MISHNA I.:** What is considered usury, and what is considered increase? If one lends a "sela" (four dinars) to get five, or two "saahs" wheat for three, this is prohibited, because it is biting. And what is considered increase? One buys wheat, a "kur" for a golden dinar (twenty-five silver dinars), which is the market price, and the price of wheat advances to thirty silver dinars; the buyer then requires his wheat, which he desires to sell, and buy wine for it. The seller said: "I accept the wheat for thirty dinars, and you shall have to get wine from me according to the present market price," but he has not wine ready for delivery; this is an unlawful increase.

**GEMARA:** In leaving out usury, which is biblical, and explaining increase, which is rabbinical only (which is the matter of an exchange), it may be deduced that, biblically, "usury" and "increase" are one and the same thing; and yet both expressions are mentioned in the same sentence [Deut. xxiii. 20]: "Usury of money, and increase of victuals?" Said Rabha: There is indeed not a case of "usury" without an "increase," and *vice versa*. The Scripture, however, mentioned purposely Neshekh (biting) and Tarbeth (increase), to teach us that there are two negative commandments for usury. The rabbis taught: It is written [Levi., xxv. 37]: "Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase." There is mentioned only usury of money, and an increase of victuals; whence we know that even the negative commandment of usury is to be applied on victuals also? There it is said [Deut., xxiii. 20]:

"Usury of victuals." Whence the negative commandment of increase on money? It is therefore said [*ibid.*, *ibid.*], "usury of money." This expression is superfluous, as it is said at the beginning of the same sentence: "Thou shalt not lend upon usury to thy brother," etc., which includes any kind of usury; therefore this superfluous expression is to be applied for the negative commandment of increase (tarbeth) on money. As this verse speaks of the borrower only, whence do we know that the same is the case with the lender? From the analogy of expression, "usury," which is used in both cases, we deduce that, as in the former case, there is no difference between money, victuals, usury, or increase. Whence, however, is to be deduced, that any increase is prohibited? From [*ibid.*, *ibid.*] "usury of anything that is lent upon usury."

Rabbina, however, said: The analogy of expressions would be needed if the Scripture would read: "Thou shalt not give him thy money upon usury, and thy victuals," etc.; but as it is written: "Thou shalt not give him thy money, and upon increase," etc., it is not necessary, because we read: "Thou shalt not give him thy money upon usury and increase," and we also read: "With usury and increase thou shalt not give thy victuals." But says the Gemara: Did not the Tana of the Boraitha deduce analogy of expressions! How then can Rabbina, as an (Amoroi) oppose the statement of a Tana? There is no opposition, as he means to say, that if it would not be plainly written in the Scripture, it could be deduced from the above analogy of expression. The above analogy, however, is needed to include every kind of usury which is not mentioned in the Scripture, concerning a lender. Rabha said: Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? (Are they not all of one and the same character?) It is necessary, for if it were written concerning usury, only, one might say it is something peculiar, as the borrower (who needs the money) is also forbidden to give usury; hence, robbery and cheating could not be deduced (as there is a rule that nothing is to be deduced from a peculiarity). If concerning robbery only, one might say because there is an act of violence, of which cheating cannot be deduced. And if it were stated concerning cheating only, one might say that because he was not aware of the cheat, and could not relinquish even if he would like to do so, therefore the above could not be deduced. Let us see. If even one from another cannot be deduced, why, then, should not

one of them be deduced from the two others? Which of them! Suppose it should not be written concerning usury, and therefore be deduced from the others. One may say that in both the above cases it was done against his will, which is not the case with usury, as the borrower agrees. And should it be deduced concerning cheating from above two, one might say that buying and selling matters cannot be deduced from a case of violence, etc. But let the Scripture leave robbery, which could be deduced from the above, as what would be the objection? "Usury is a peculiarity!" cheating would prove; and if there would be an objection that in the case of cheating no relinquishment could be made, as it was not known, usury would prove. The same discussion will revolve indefinitely, and though the points of each are different, they are equal, however, in one point: that their acts are considered a robbery; hence, robbery could be deduced? It may be said: That so it is, and the commandment of robbery applies to him who withholds the wages of an employee. But is this not plainly written [Deut., xxiv. 14]: "Thou shalt not withhold," etc.? It is written to show that two negative commandments shall be applied to any act of unjust keeping of wages. If so, why then is theft mentioned? (Could it not be deduced from above?) It is needed, as it is stated in the following Boraitha: "Thou shalt not steal," even with the intention to vex a short time, and returning; "Thou shalt not steal," even with the intention to please your neighbor with the due double amount (instead of charity, which he would probably not accept). R. Yimar questioned R. Ashi: (After all that is said above,) is not the commandment superfluous concerning right weight? And he answered: The commandment applies to him who hides his scales in salt that they should become heavier. But is this not a direct robbery? I mean to say that the transgression comes just with the act (although he had not used it as yet).

The rabbis taught: It is written [Lev., xix. 35]: "Ye shall do no unrighteousness in judgment, in mete-yard, in weight, or in measure." Mete-yard means measuring real estate; one should not measure with the same rope for two heirs, for one in the summer season and for the other in the winter (because the rope, if dry, is shorter). "In weight" means, one should not hide the weight in salt (explained above). A small liquid measure one shall not fill up in a manner to make foam; and from this the following *a fortiori* conclusion is to be drawn: Of a small measure which contains only a thirty-sixth part of a lug, the

Thora is particular that the liquid should not be measured with foam; of a hin or a lug, or a half, third, or quarter of a lug, so much the more the measure must be full without foam.

Rabha said: Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? The Holy One, blessed be He, said: It was I who distinguished in Egypt between a first-born and another one, and it is also I who will punish one who lends money upon usury to an Israelite with the pretext that the money belongs to a heathen; and also him who hides his weights in salt, and finally him who puts thread of *χалаιγος* in his garment and saying: it is purple-blue prescribed in Scripture for Tshitstits; as in these three things human beings can easily be deceived.

R. Huna happened to come to Sura of Euphrates. On that occasion Hanina of the same place questioned him: Why did the Scripture mention the redemption from Egypt in conjunction with the eating of reptiles? And he answered: "So said the Holy One, blessed be He: I who have distinguished in Egypt, etc., will punish one who mingles the inwards of unclean fishes with the inwards of clean ones and sells them to an Israelite. And he rejoined: What I do not understand is, why is here mentioned "who brought you up," which is not the case in the other place where the redemption from Egypt is mentioned?

Said Rabbina: To that was taught by the school of R. Ismael: The Holy One, blessed be He, said: If the only reason why Israel should be redeemed from Egypt would be that they should not defile themselves with the consummation of reptiles, it would be sufficient [*i.e.*, the expression, Who brought you up, is in the Hebrew *Hamnaleh*, which means also, a higher standing]. To the question, however, Is then the reward for not eating reptiles greater than that of the three things mentioned above (to which the expression, I brought you up, is not used)? he rejoined: The question here is not about reward, as the Scripture means they were brought up in such a manner that they felt disgust to defile themselves with reptiles.

*What is considered increase, etc.?* Is then all that mentioned before in the Mishna not increase? Said R. Abuhu: The cases of the first part are biblically prohibited, and those of the latter rabbinically only. And so also said Rabha, with the addition that to the first part the verse [Job, xxvii. 17]: "He may prepare it, but the just shall put it on," applies (*i.e.*, that the children, even being upright, are not obliged to return usury taken by their

wicked fathers). But why not so much the more in the second part, which is rabbinical? Say then: The above cited verse applies to the first part also, although the first part treats of direct usury and the second of indirect. R. Elazar said: Direct usury is to be replevied by the court, which is not the case with indirect usury. R. Johanan, however, maintains that even the former is not to be replevied. Said R. Itzhak: The reason of R. Johanan's decision is the following verse [Ezekiel, xviii. 13]: "Hath given forth upon usury, and hath taken increase, shall he then live? He shall not live; he has done all these abominations." Hence such a man is charged with a crime of capital punishment, from whom damages are not collected.

R. Adda bar Ahaba says of the following [Lev., xxv. 36]: "Take thou no usury of him or increase, but fear thy God." Hence nothing is mentioned here about the restoration (as is mentioned in the case of theft or robbery).

Rabha, however, said: It is to be deduced from the first part of the above cited verse itself [Ezekiel, xviii. 13]: "He shall surely die: his blood shall be upon him." Hence the usurers are equalled to blood-shedders; as bloodshed cannot be restored, the same is the case with usury. R. Nachman bar Itzhak said: "The reason for R. Elazar's theory stated above is because it treats in the latter part of the verse mentioned before [Lev., *ibid.*, *ibid.*], that he may live with thee, which means, return him the usury taken, that he may live. R. Johanan, however, applies this verse to the case mentioned in the following Boraitha: "If two were on the road (in the desert), and one of them has a pitcher of water which is sufficient for one only until he may reach an inhabited place, but if both would use it both would die before reaching a village;" and Ben Patturo lectured that in such a case it is better that both should drink and die than one should witness the death of his comrade. (And so it was practised) until R. Aqiba came and taught: It is written: "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to the life of thy brother).

R. Saffra said: Promised usury, which, according to the Persian Law, is collected from the borrower for the lender, according to our Law must be collected from the lender for the borrower; and that which, in accordance with the Persian Law, is not to be collected, is also not to be collected from the lender, according to our Law. Said Abayi to R. Joseph: Is this to be considered a standing rule? Are not then two saahs of grain promised for one

saah, that the Persian court collects from the borrower for the lender, and we do not return such to the borrower? And he answered: They do not collect it because of usury, but because they consider it as a deposit in the hand of the borrower when the grain was dear, and now, as it is cheaper, they collect the value of the deposited grain, which may amount to the extent of two saahs (according to our Law, however, it is prohibited, because it appears usurious). Said Rabbina to R. Ashi: Let us see. A pledge without account (*i.e.*, if one has borrowed money for a vineyard and the creditor used the fruit of it without deducting anything of the debt, but for usury of the money), if the borrower used the fruit for himself, the Persian court collects from the borrower for the lender; and according to our law in such a case we do not collect from the lender for the fruit he has used (as it is not considered direct usury, because it may happen that the vineyard should be sterile)? And he answered, that this also is not because of usury, but because they consider it a regular sale. (The lender paid money for the vineyard, and it is considered his until the borrower repays the amount, which is considered another sale.) Then how is R. Saffra's statement to be understood? His statement is concerning money matters only, direct usury, which is allowed by the Persians, and such a promise is collected by their court; in accordance with our Law, if the lender has already taken charge, it is to be collected from him by a court, and this is in accordance with R. Elazar's theory stated above, and also his further statement that what the Persians do not collect from the borrower speaks of usury which was not fixed with the loan, but taken previously or after it (as will be explained in the last Mishna of this chapter).

*If one buys wheat, etc.* And if he has no wine, is this to be considered increase? Have we not learned in the following Boraitha: "A price must not be fixed on fruit before the market prices are announced; but when already announced, one may sell it for this price even if it is not in his possession as yet?" Said Rabba: Our Mishna treats when he came to take it for his debt, as is illustrated in the following Boraitha: "If one claims a hundred zuz, and goes to the barn of his debtor, saying: 'Give me my money, as I intend to buy wheat for it,' and he says: 'You can buy it from myself at the existing market price, and I will deliver it to you in monthly instalments during this year,' it is prohibited (although it would be allowed if he would advance him cash now), as the old debt is not considered for cash at the time

of this agreement." (Hence the statement of our Mishna that when he has no wine at the time it is considered an increase, which is prohibited.) Said Abayi to him: If so, then even when he possesses the wine it should be considered an unlawful increase (as the wheat which he claims is an old debt)? Therefore, said Abayi, the Mishna is to be explained as R. Saffra illustrated the law of usury taught in the school of R. Hyia: "There are things which in reality ought not to be considered usury, and nevertheless they are prohibited because they *appear* usurious." How so? (Illustrates R. Saffra:) If one said: "Borrow me a mana" (which is twenty-five selas), and he answered: "I have no money in cash, but I can furnish wheat for a mana," and he accepted, and thereafter the lender buys it from him for twenty-four selas, this is lawful, but nevertheless it is prohibited to be practised, as it appears usurious. And similar to this case may be the case in our Mishna illustrated; namely, if one said: "Borrow me thirty dinars," and he said: "I have no cash, but I can furnish you wheat for this amount," and he accepted, and thereafter the lender bought from him for a golden dinar (which is twenty-five silver dinars) as the market price at that time, but before delivering it to him the price increased to thirty, and when the lender came to require his wheat the borrower said: "I have no wheat, but wine for thirty dinars," then, if he possesses it he may do so, as he took from him a trade article and repays him with a trade article, but if not he will be compelled to give him the value of the wheat at the increased price (*i.e.*, thirty dinars), and this appears usurious. Said Rabha to him: If so, why does the Mishna state, Give me my wheat (the value of which when he bought it was only a golden dinar; the borrower of the wheat is considered now a seller and the buyer has not made a drawing or paid any money for it that he should acquire any title to it, hence the seller may retract and give him back twenty-five dinars; we must then say that the lender claims thirty dinars, the value of the wheat he sold him first):\* then let the Mishna state, Give me the value of my wheat? Read, then, "The value of *my* wheat." But does not the Mishna state: "Which he desired to sell," and according to your theory it should state: "Which he sold"? Read, "Which I *sold*." But the further expressions: "I accept it for thirty," "so is the

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\* The text here is both very short and complicated. The commentators are silent. We therefore were compelled to give our own explanation.

market price," could not be explained in accordance with your theory? Therefore said Rabha: When I will die, R. Oshia will come to meet me, as I try always to explain his Boraithas in accordance with the Mishnayoth. And there is a Boraitha taught by the same, as follows: "If one claims a mana and stands at the barn of his debtor, saying, Give me money, as I desire to buy wheat for it, and he answers: I possess wheat and can furnish it to you at the market price (and the lender accepts it), then, when the time to sell the wheat arrived, and he required his wheat for sale, as he wants to buy wine to sell it in season, and he says: I possess wine, buy it from me at the market price (and he again accepted), and when he came, in season, requiring the wine for the purpose of selling it to buy oil for the season, and he says: I have also oil and you can buy it from me at the existing market price—in all these cases, if he possesses the articles, it is allowed; if not, it is prohibited, because it appears usurious." And the expression in our Mishna: "If one buys wheat," means that he bought it for his previous loan.

Rabha said: From the above cited Boraitha three things may be inferred: (a) That with a loan articles may be bought at the existing price to deliver in instalments although the price may be increased, and it is considered as though he would give him cash—not in accordance with R. Hyia's statement above, that it is not so considered; (b) provided the article is ready by the debtor for delivery; and (c) R. Janai's statement\* that there is no difference between the article and the money; as it is allowed to accept an article bought at the existing price even if afterwards the price increased, so is it also allowed to accept the difference in money.

The same said again: As the above theory is correct, there is no difference even if the article is not ready for delivery by the seller to buy of him at the existing market price, provided he takes the money now (as he can buy the article everywhere, it is considered as if it were ready for delivery).

R. Papa and R. Huna b. R. Joshua raised an objection to his statement (*supra*, p. 151): "In all cases, if he possesses; . . . if not, it is prohibited." And he answered: (What comparison is it?) There is a loan and here a sale.

Rabha and R. Joseph both said: The rabbi's decision that one may buy articles to deliver them in instalments at the exist-

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\* See also First Gate, p. 232, before Mishna V., Rabbi's statement.

ing market price (in the larger cities, without fear that it appear usurious \*) is because the buyer may say: I do not consider it favorable even should the price increase during the year, as for the cash I have forwarded to the seller I could buy in the cities of Hini and Shili, at a lower price than in the larger cities, all I need for this year. Said Abayi to R. Joseph: According to thy theory, it should be allowed to lend a saah of grain in the time when it is cheap, to return the same measure to him when it is dear, as the lender can say: I do not see any favor in this, as I could keep the wheat in my store until that time (and it is said above that this is not allowed, as it appears usurious). And he answered: There is a loan, but here is a sale. Said Ada b. Abba to Rabha: After all, it is still an advantage to the buyer, as he would have to pay the broker (*i.e.*, has he not the advantage of saving the broker's fee?). And he rejoined: It treats when he pays the same to the seller. R. Ashi, however, said: A man's money does the brokerage for him (*i.e.*, dealers come to the wholesaler directly).

Rabba and R. Joseph both said: One who buys grain in the time when it is ripe, but before it was harvested (when the market price is not yet fixed, and it is said above that from him who possesses, it is allowed to buy even before the price is fixed), he must convince himself by seeing the grain at the barn of the seller. (Asks the Gemara:) To what purpose? If to acquire title, the seeing would not do (without drawing it)? And if in case of retracting by the seller he should be classified with those who have to accept the curse (mentioned in Chap. iv., Mishna I.), is the same not the case if he has not seen? Yea, it is for that purpose; but, usually, he who buys grain in the above-mentioned time buys it of two or three farmers; and then, if the farmers have seen him at their barns, they are sure that the buyer relies upon them. But otherwise the farmer may say: I thought you found better ones and you did not care any more to take mine, therefore I sold it out. Said R. Ashi: Now, coming to the conclusion that the relying upon him is the reason of the above statement, it is sufficient even if he had told him: I rely upon you at any other place.

R. Nahaman said: The rule of usury in transactions is:

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\* This also is our own explanation, as without this there is no meaning. Meyer of Lublin tries to give some explanation to this paragraph, but he makes it still more complicated.

If he sells him the article cheaper because it is not yet in his hand, it is forbidden. He said again: If a wax dealer says to the buyer: "I need money and you can get now five wax cakes, for a zuz instead of the fixed price, which is four," if these cakes are ready for delivery he may do so, but not otherwise. Is this not self-evident? Lest one say that the same is the case when the wax dealer has to gather his cakes placed with others' in the city, as this is similar to the case: "Lend me . . . until my son will return with the keys," mentioned above, he comes to teach us that this case, that they are not collected as yet, is not to be considered if they would be in his hand.

The same said again: If one found a surplus in the small coins he borrowed, he must return him the surplus, provided such an error is usual. If, however, it could not be supposed as an error, he may consider it a present of his friend. What error is to be considered usual? Said R. Aha b. R. Joseph: To the number of tens and fives (*e.g.*, if he had to give him two score and he found twenty-one or twenty-two, or he had to give him twenty-five and he found twenty-six or twenty-seven; but not if he found twenty-five instead of twenty). Said R. Aha b. Rabha to R. Ashi: But if the lender was a miser, so that a present from him is unimaginable, how then? And he answered: Then it can be supposed that with this he returned him the sum which he robbed him of some time ago, as we have learned in the following Boraitha: "If one has returned robbed money with an account of other money he had to give him, he has done his duty." The former questioned again: But how is it if he never did any business with him? And he rejoined: Even then it may be supposed that another one who robbed him of the same amount told him to do so, when it will occur that he will require a loan from him.

R. Kahana said: I happened to be at the college when Rabh had finished his lecture and I heard him saying: "Melons, melons," and did not know what he said about them. After Rabh left, the college men told me that he had said as follows: If one advanced money to a gardener for melons, to deliver to him thereafter, and his melons usually were the size of a span, the price of which was ten for a zuz, and he promised to give him the same number at the size of an ell for the advanced money, this agreement is of avail. Is this not self-evident? Lest one say that because they are growing from themselves it is allowed, he comes to teach that even then it is only when he possesses such. And according to whom is it? To the Tana of

the following Boraitha: "If one goes to milk his goats, to shear his sheep, or to take out honey and wax from his hives, and he offers to sell the products by the advance of money for a cheaper price, it is allowed. If, however, he says: 'I will sell you the above products to a certain quantity which will be produced in the future, it is prohibited.'" Hence, we see that although they grow from themselves it is, nevertheless, prohibited. Rabha, however, said the articles are not similar to the case of melons, as the same melons which are now small will become big by growing themselves, but milk, wool, or honey of the bees is not grown at all, as he takes the milk out to-day and on the morrow there is other milk instead, and the same is with the shorn wool and the honey. Therefore, the above-mentioned case of the melons is permissible.

Abayi said: One may say to his comrade: "Take four zuz for a barrel of wine you possess, with the condition that if it should become sour you should be responsible, but if it becomes dearer or cheaper it should be charged on my account." Said R. Shrabia to him: Is this not a case in which the profit is to be very likely expected, and little loss from damage (*i.e.*, the increase in price is usual, and its becoming spoiled unusual, and there is a rule that in such cases it must not be done)? And Abayi answered: This would be correct if he would not accept in case it became cheaper, but since he accepted this also, both chances, of profit and damage, are alike.

MISHNA II.: A lender must not dwell in his debtor's house for nothing, or even for decreased rent, as it is usury.

GEMARA: Said R. Joseph b. Menjumi in the name of R. Nahaman: Although it was decided that one who occupies the court of his neighbor without his knowledge need not pay any rent (First Gate, p. 41); if, however, he said to him: Borrow me some money and dwell in my house, he must pay him rent. If however, while dwelling there for nothing he lent him any money, he need not pay. Why so? As the loan was not made previously for this purpose, it does not matter.

Abayi said: If a debtor who sold grain, four measures for one zuz, had to pay a zuz usury, and furnished to his creditor five measures for the same, then the court that levies the usury levies only four measures, as the fifth may be considered a present. Rabha, however, says: All the five must be levied, as all the five together came to hand by usury.

Abayi said again: If a debtor who owes four zuz usury has

furnished a garment to his creditor, when the court levies the usury it levies only four zuz, but not the garment. Rabha, however, maintains that the garment is to be levied, for the reason that people may say that the garment he wears is of usury.

Rabha said: If one claimed thirteen zuz usury, and at the same time he hired a court of his debtor for the same price which is worth only ten, when the usury is levied all the thirteen zuz are to be collected. Said R. Aha of Difti to Rabbina: Why should not the creditor claim: "Because the money was of a profit I did not care to give him three zuz more than the value, but now, when they levy the money, why should I be charged more than others?" And he answered: The owner of the court may say: "There is no difference, as so was my agreement and you accepted it."

MISHNA III.: Hiring may be increased, but not sale. How so? The owner may say to the hirer: "You can have this court for ten selas a year, if you give me the money in advance, but if in monthly instalments you have to pay one sela a month." It is, however, not allowed for the owner of a field to say: "If you advance me a thousand zuz you can have this field, but if by instalments, you have to pay twelve hundred."

GEMARA: Why are the two cases so different? Rabba and R. Joseph both said: Hiring is usually paid afterwards, and so if he pays him monthly he pays only what was due the last day of the month, as during the month he did not owe him anything, consequently there is no reward for waiting for the payment; and the lower price which he offered him, for paying in advance the money for all the year, must also not be considered usury, as the owner has a right to reduce the price for occupying his property. With sale, however, it is different, because the money must be paid with the act of the sale, and he acquires title immediately. Consequently, the increase of 200 for the instalments is usury. Said Rabha: The rabbis have investigated this matter to find its basis in the Scripture, and finally based it upon the verse [Lev. xxv. 53]: "Hired from year to year," which signifies that the hiring of this year is paid at the beginning of the next.

*But if by instalments, etc.* R. Nahaman said: It is allowed to increase the price of an article when the money is to be paid a certain time after delivering (provided he does not say: "If for cash, you will have it cheaper"). And Rami, according to others Uqba b. Hama, objected to him from the last part of our Mishna; and he answered: There he said plainly: "If you advance me

the money you will have it cheaper" (which certainly appears usurious). Said R. Papa (who was a brewer): I do so with my customers. I sell them on Tishri at the price of Nissan, thinking that to me it is undoubtedly allowed, as my beer would not get spoiled until Nissan and I am never in need of money (so that I should sell cheaper for cash), and I do only a favor to my customers by crediting them. Said R. Shesheth b. R. Aidi to him: Why should the master take the example of yourself and not of your customers? You should consider these circumstances, that if they would have money they would pay you at the price existing in Tishri? Said R. Hama: I do so in my business, and to me it is allowed beyond any question (Rashi explains that he was a wholesale dealer in many articles, and he sold them to the travellers at the market price of the large cities, with the condition that they should pay him when they returned, and he was also responsible for his goods on the way until sold; they, however, were allowed to buy articles for the money obtained and to sell them in other places), as they are pleased that I take all the responsibility of the goods until sold, and also that they are free of duty because the goods bear my name (the Persians used to free the rabbis of duties), and furthermore that my goods have the preference for sale, as it is announced in the market that no one can sell the same goods until mine are sold, because they bear my name.\* The Halakha prevails in accordance with R. Hama, with R. Elazar (who says that usury is levied), and also with R. Yanai, who said above (p. 152) that there is no difference between the articles and the money.

MISHNA IV.: If one sold his field, taking a deposit and saying: "You may take possession of the field belonging to you from to-day, when you will bring the balance," such an act is not allowed. If, however, one has borrowed money on his estate with condition that if he will not repay within three years it shall belong to the lender, it belongs to the lender if not paid; and so did Baitus b. Zunin under the supervision of the sages.

GEMARA: But who uses the fruit in case he sold his field by a deposit? According to R. Huna, the seller; and according to R. Anan, the fruit must be deposited until the remainder is paid. And they do not differ. R. Huna speaks in case the seller told him he shall acquire title when he will bring the balance, and

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\* This was usually done by the Jewish courts when a scholar came to their city with his trade, and with references from other courts.

R. Anan speaks in case he said, When the balance will be paid in time title shall be acquired by you from to-day.

R. Saffra learned in the Boraithas, treating upon usury, taught in the school of R. Hyia, concerning the statement of our Mishna: There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only.

And Rabha illustrated it thus: The first case applies when the agreement was that he shall acquire title for the amount of the deposit only; the second applies when he was told that if he will pay the balance in time, title to the property shall be given to him from to-day; the third applies, if he was told, A title will be given to you at the time when you will bring the balance; and the fourth applies if he was told, Title is given to you from now and the balance you owe me should be considered a loan.

According to whom is the statement of our Mishna that both are prohibited? Said R. Huna b. R. Joshua: At any rate, it is not in accordance with R. Jehuda, who said: If there is only one side of usury (*i.e.*, if, for instance, the buyer should not keep his promise, there would be no usury if the seller used the fruit) it does not matter. (The other parts of the above Boraitha, however, are in accordance with R. Jehuda also, as there is a certain usury without any doubt).

If one has pledged his house or field, and the lender said to him: "You may sell it to me for such and such amount, but if you sell it to another, you will have to add such and such an amount to my loan," this is usury. But if he says: "Should you wish to sell for its value, I shall have the preference," it is allowed. The same is the case if one has sold a house or a field with the condition that if he should have money thereafter, the estate should be returned to him; it is considered usury (as the money is considered a loan for which the lender uses the estate until the money is returned). If, however, the *buyer* says: "I will return it to you when you will have money," such an agreement is allowed. [And the above-mentioned R. Huna said that these two Boraithas also are not in accordance with R. Jehuda, as there is only one side of usury (*i.e.*, that should the seller or borrower not have the money necessary, there would be no usury) which is allowed according to his theory.] But what difference is there if the seller made the condition of returning when he will have the money, or the buyer made it? Said Rabha: That is, if the buyer said, "I will do so not as a condition but by my good will."

There was a man who bought an estate without any security—*i.e.*, that the seller did not take the responsibility to return him the money should the estate be taken away from him by the seller's creditors. Seeing, however, that the man looked down-hearted, the seller said to him: "Why art thou grieved? Should it be taken away from you I will collect for you the fruit and the improvement." Said Amimar: This is only a gossip. Said R. Ashi to him: Your reason is, because this condition should be made by the buyer and not by the seller; does not the above Boraitha state that if the seller said, "I will return it to you, etc.," it is allowed, because such a condition ought to be made by the seller and not by the buyer? And Rabha explained this that only when the buyer says: "It is not a condition, etc.," from which it is to be inferred that if he did not add this it would not be considered as a gossip? And Amimar rejoined: Rabha means to say thus: As this condition should have been made by the seller, and it was not, then when the buyer says, "I will do it," it is to be considered as though he would add: "from my good will."

It was taught: It happened that a sick man wrote a divorce to his wife and she heard him sigh. Then she said to him: "Why do you sigh? If you will live I am yours." Said R. Zebid: It is to be considered a gossip only. Said R. A'ha of Difti to Rabina: And should it not be considered so, what harm could there be? Does it then depend upon her to make a condition in the divorce? That depends on the husband only. (And he rejoined:) Lest one say that, hearing her statement, the husband resolved to give the divorce upon this condition, he comes to teach us that it is not so.

*If one has borrowed money on his estate, etc.* Said R. Huna: The case is if the condition was made at the time the money was paid. If, however, it was made thereafter, title is acquired according to the amount paid only. R. Nahaman, however, maintains that even then title is acquired on the whole estate; and R. Nahaman acted accordingly in a case of the Exilarch. R. Jehuda, however, tore the document, and the Exilarch told this to R. Nahaman, and he said: (It does not matter;) a boy tore it as, concerning jurisprudence, all are considered boys in comparison with me. Afterwards, R. Nahaman retracted from this statement, and said that even when the condition was made at the time the money was given, it is of no avail. And Rabha objected to him from our Mishna: "If he will not repay within three years . . . it is his." And R. Nahaman answered: I say that an

*asmakhta*\* gives title. Minjumi, however, maintained that it does not. But then our Mishna contradicts Minjumi? He interprets our Mishna as treating of when the seller said: Title should be acquired by you from now. Said Mar the Senior and the Junior, sons of R. Hisda, to R. Ashi: So said the sages of Nahardai in the name of R. Nahaman: An *asmakhta* gives title only in time but not thereafter. And R. Ashi rejoined: This would not be correct, as there is a rule that a thing which gives title in time gives also thereafter. Perhaps you mean to say thus: If the borrower sought him within the time of the loan and told him: Acquire title on it, as I will not redeem it any more, then title is acquired; but if he said the same to him after the time has elapsed, it counts nothing, as it is to be considered that he said so only because he was ashamed for the delay of the payment. (Says the Gemara :) In reality, title is not acquired even within the time, as the saying of the borrower is to be considered as a postponement of time only, as he would not like to be troubled when the time of payment arrived.

R. Papa said: The *asmakhta* sometimes gives title and sometimes does not. If, *e.g.*, he finds his debtor on the day of payment drinking beer, and not caring about the payment of his debt, it is to be considered that the debtor does not intend any more to redeem his pledge, and then title is acquired by the lender; but if he found him on that day searching for money, title is not acquired. Said R. A'ha of Difti to Rabina: Even in the first case title should not be acquired, as it may be the debtor drinks only to drown his grief, or he relies upon some one who assured him that he would furnish him money. Therefore said Rabina: If we see that the debtor does not care to lower the price of his goods for the purpose of collecting the money due, it must be considered that he does not care any more for the pledged estate, and title is acquired. And the above R. A'ha rejoined: Even this proves nothing, as it may be he does not want people to know his circumstances, which would cause a reduction in value of his estate. Therefore it may be assumed that R. Papa's statement was thus: If the debtor was particular on that day with his estate not to have it sold, even for its value, it is certain that he does not care

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\* The term *asmakhta* is very difficult to translate into English with a term of the same meaning. The literal translation of *asmakhta* is "relying upon," which is to be understood: "He acquires title because he relies upon it"; and therefore we use the term *asmakhta* in the text without explanation. Jastrow tries to explain this term at length in his dictionary. See there, Part I.

for the estate pledged, and title is acquired. R. Papa said again: Although it is decided by the rabbis that an *asmakhta* gives no title, it is nevertheless considered a hypotheca of which he should collect his money. Said R. Huna b. R. Nathan to him: Has then the debtor at the time pledged said: "Acquire title on the estate to the amount of my debt"? Said Mar Zutro bar R. Mari to Rabina: And even if he said so, would the title be acquired? The stipulation of the pledge was that if he does not repay him within three years then he may collect from this estate, and this is again only an *asmakhta*, which gives no title. Therefore the hypotheca mentioned by R. Papa is to be explained, that the stipulation was thus: "From this estate you shall collect your money within three years (*i.e.*, I shall sell out from it for your money). However, should the money not be collected within that time, all the estate shall belong to you after the elapse of above-stated time."

There was a man who sold an estate with security, and the buyer questioned: "Should this estate be taken away by your creditors, will you then repay me from the very best of your estates?" And he answered: "From the very best of my estate I will not, as I need it for myself; your money, however, will be collected of other best estates I possess." Finally it was taken away, and the very best estate of the seller was overflowed. R. Papa (before whom this case was brought) thought to collect the buyer's money from the best estate still left in his possession. (The seller, however, claimed that the agreement was, he should repay him from the best but not from the very best; and as now the very best is overflowed, this next best is now the very best, which he needs for himself, so he has a right to repay him from the estate lower in value.) Said R. Papa to him: "This estate which was secured is still in your possession, and you have to repay from it."

Said R. A'ha of Difti to Rabina: "The claim of the seller (just explained) is a just one, as this estate which is not overflowed is now his very best, which according to the agreement was not security." Rabi b. Shiba was a creditor of R. Kahana, who said to him: "Should I not pay you at a certain time, you may collect your money from this wine." Finally the wine became dearer, and R. Papa was about to say, that the law of *asmakhta*, which gives no title, applies only to real estate which was not for sale. This wine, however, which was for sale, is considered money. Said R. Huna b. R. Jehoshua to him: "So

was said in the name of Rabba: 'Everything made with a stipulation, gives no title.' " R. Nahaman said: "As the rule that an *asmakhta* gives no title is accepted by the rabbis in case of a loan with pledged estate for three years, if the lender took possession of it and used the products he must return both."

(Said the Gemara:) "Shall we assume that R. Nahaman holds that a relinquishment by an error is not to be considered? Was it not taught concerning one who sold out the products of his tree, that, according to R. Huna, he may retract from the sale before the fruits were produced, but not afterward; and according to R. Nahaman he may, even in the latter case?" He, however, said: I admit that if the buyer used already the products in question, it is not to be collected from him (hence we see that a relinquishment by an error is considered?). (The answer was:) There was a sale, but our case is a loan, and the lender used the products for the interest of his loan, which is considered direct usury, which is to be collected by the court.\* Rabha said: I was sitting before R. Nahaman at the time he said, "I admit, however," etc. (just quoted), and was about to object to his statement from the law of cheating mentioned above, that the amount cheated must be returned, although it was done willingly. (*Supra*, p. 126.) He, however, looked at me and understood my intention, and he therefore brought as a support to his statement the following Mishna (Kethuboth ii., Mishna 6): "She who refuses to cohabit with her husband, etc., is not entitled to her marriage contract." (The compensation for usufruct, etc.), from which it is to be inferred that although her husband has not any right to use the fruit belonging to her, it is not to be collected from him if he has done so. (Says the Gemara:) In reality, however, both the objection and the support do not hold; there is no objection from cheating of which the cheated one was not aware that there is such, that he should relinquish it; and there is no support from the woman in the Mishna cited, that each of the women mentioned in the cited Mishna would be pleased to be counted among the married ones.

There was a woman who said to a certain man: "Go and buy for me an estate from my relatives." He did so. The seller, however, said to him: "I sell it to you with the stipulation that

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\* This is the explanation of Rashi. Tosephath, however, objects, saying "that using fruit is not considered direct usury, but indirect, which is not to be collected," and therefore they give another explanation to this paragraph. See there.

when I shall have money, I shall repay you and take back my estate." And the messenger answered him: "You and Navla\* are brother and sister and you can settle this matter between you." Said Rabba b. R. Huna: "Such an answer may be considered satisfactory, that the seller should rely upon it, and therefore he doesn't give title." (Questioned the Gemara:) "According to this decision, the estate certainly must be returned; but how is the law with the products if she used them? Is it considered direct usury, which is levied by the court, or indirect, which is not?" Said Rabba to R. Huna: "It seems that it is considered indirect," and so also said Rabha. Said Abayi to Rabba: "How is the law with an estate pledged without any stipulation, when the lender has used the fruit? Shall we assume that the reason, in the above case, which was considered indirect, is because it was not determined at the sale she should use the fruit, and the same is the case here? or it is not to be compared, because there was a sale, and here it is a loan?" And he answered: "This reason holds good, in this case also." Said R. Papi: Rabina acted in his court not in accordance with Rabba b. R. Huna's statement, but has reckoned the value of the fruit used and collected.

Mar b. R. Joseph, in the name of Rabha, said: "In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law as follows: If the lender has used the products to the extent of the amount of his loan, he may be ejected from the estate; if, however, he has used more than the amount of the loan, the court may not collect from him, neither may it be deducted from another debt which the debtor owes him. If, however, the estate belongs to orphans, then if he has used more than the amount due, it is to be collected, or deducted from another debt they owe him." Said R. Ashi: "As you came to the conclusion that in case he has used more than the amount due we do not collect from him, we do not eject him even if he has collected the amount of the money loaned, unless he is paid the money issued; because the ejecting is the same as if it would be *collected* for the product consumed by means of sale, and not by means of deducting from his loan, and this is not to be done with indirect usury." And R. Ashi

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\* Rashi says that he has seen in the answers of the Gaonim that Navla is an Aramaic expression, which was used in brotherhood; he, however, maintained that so was the name of the woman who sends the messenger to buy the estate.

acted accordingly in a case of orphans irrespectively of age. Rabha R. Joseph, in the name of Rabha, said: In the places where it is the usage to pledge estates without stipulations, it is advisable that one shall not use the fruit unless by way of deducting something of the debt, as then it is considered as if he would sell him the products for the amount deducted, and it appears not usurious. A scholar, however, must not do even this, but he must determine at the time of the loan how much he may use. But this would be correct only to him who holds that a determined quantity is allowed; but to him who holds that even this is not allowed, what can be said? [And it is known that R. Aha and Rabina are the two who differ on that point.] Let us then see. What kind of a determination is meant? If, *e.g.*, the lender stipulated, "I will use the fruit during five years without any deduction; at the elapse of that time, however, I will credit you with all products." Such a determination, however, is opposed by some sages, who maintain that as soon he uses the products without any deduction it is direct usury; we must therefore say that the determination mentioned by Rabha means, if he said: "During the first five years I will deduct from the amount due so-and-so; at the elapse of this time, however, I will credit you with all products." R. Papa and R. Huna b. Yehosha both said: "The pledged estates in question, a creditor of the lender has no right to collect from in case he dies" (because the deceased has nothing in the body of the estates, and the using of their products is considered movable property, which is not secured to a creditor after the death of the debtor, although it may be collected from him as long as he is alive; and the reason is that as long as he is alive, although movable properties are not secured to the creditor, the court has a right to levy on them for a debt for which the debtor has promised to repay, even from the garment of his body; but after his demise his orphans are not obliged to repay their father's personal debt if it were not secured by real estate). And also a first-born of the lender can not claim the double amount prescribed to him biblically, for the above reason, and the Sabbatical year makes the debtor free, as it is not considered a pledge, since the borrower has a right to eject the lender from the estate after the product was used to the extent of the amount due. In places, however, where it is not customary to eject the lender from the estate in question, a creditor and a first-born may claim their right on it, and the Sabbatical year does not make it free. And Mar Sutra, in the name of R. Papa, said that, as to the estate in ques-

tion, where it is the usage to eject the lender, he may be ejected even from using dates that were blown down by wind on the rush mats. If, however, the lender has already picked them up from the rush mats, and put them in his vessels, title is acquired. And according to him who says that when the vessels of a buyer are placed in the care of the seller for the purpose of putting in them the things bought it gives title to the buyer even in his absence, if the dates in question were put in the vessels of the lender by some one they give title to him even if he himself has not picked them up. It is certain that in countries where ejection is the usage, and the lender stipulates that he shall not be ejected, it is of avail; but how is it when the lender made the stipulation that he may be ejected, in places where ejection is not the usage—is it then necessary to enforce this by the ceremony of a *sudarium* or not? According to R. Papa it is not necessary, and according to R. Shesheth b. R. Aidi it is, and the Halakha so prevails.

If the borrower says to the lender: "Stop using the fruit, as I am about to furnish the money due," he must do so immediately (in places where ejection is usage). If, however, he says: "Stop using the fruit, as I am making efforts to get the money"—according to Rabina, the lender may not listen to him, and according to Mar Sutra, the son of R. Mari, he has to, and so the Halakha prevails.

R. Kahana, R. Papa, and R. Ashi did not use the fruit even by deduction; Rabina, however, used to do so. Said Mar Zutra: "The reason of him who does so is, because he compares this to the biblical case [Lev. xxvii. 16], that although the fruits of the field mentioned there are of great value, he may redeem it for the sum of four zuz a year,\* and the same is the case here (he may do so because he is not certain that there will be any products of the estate, consequently, he may buy it for a small price): However, he who does not allow this to be done holds that this case is not similar to the biblical case mentioned above—there is a sanctification for which the Merciful One allows it to be redeemed for such a trifle; but here it is a loan, and it appears usurious." R. Ashi said: "I was told by the elders of M'tha Mechasia (Suria) that an anonymous pledge holds good one year only; *i.e.*, that the borrower can eject the lender only after the elapse of a year, but not earlier." He said again: I was told by the same

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\* It is according to the estimation prescribed in the Scripture in this paragraph; the Talmud counts it according to the money used at that time.

authorities that a pledge is called *mashkhantha*, as the lender is considered from that time a neighbor (shakhan) to the borrower; so that if the borrower has to sell his estate, and the lender is willing to give the same price as offered by others, he has the same privilege as the preëmtor of an estate attached to that of the seller, to whom the laws give privileges to obtain it for himself in case he offers the same price as others.

Rabha said: The Halakha does not prevail, as the inhabitants of Papuna, who sell their goods on instalments for the same reason as R. Papa mentioned above (p. 156), and not as the inhabitants of Mahuza, who used to write in their notes the profit which they supposed the borrower would derive from the money taken on half profit, as who can assure that such a profit would be derived? Said Mar b. Amaimar to R. Ashi: "My father used to do so, and nevertheless when they claim that such a profit was not derived, he trusted them;" and he answered: This holds good only when they came to *him* with that claim; but how would it be in case he should die and the note falls into the hands of his heirs? [R. Ashi's talk was like an error which proceedeth from the ruler (Eccles. x. 5), and Amaimar died.] And also not as the farmers of the city of Narshah, who used to lend money to poor farmers on their land, and thereafter rented it to them for so-and-so many kurs yearly, and so they wrote in their contracts: "So-and-so has pledged his field to so-and-so, and afterwards he rented it for so-and-so many kurs." Had, then, the lenders acquired title on the field to be justified to rent it out? It is then direct usury. However, now that they write in their agreements: "I have bought from so-and-so such a field for so-and-so, and it was under my control such length of time, in which I have used the fruit and have deducted from the money paid, and thereafter I rented it to the former possessor for so-and-so many kurs yearly"—this is allowed, for the purpose not to shut the door for borrowers. (Said the Gemara :) After all, it is direct usury, as it can happen that the field should not yield so much product as agreed, and the lender takes the kurs of grain as interest for his money.

MISHNA V.: One who possesses articles for sale must not give them to a retail dealer to sell, with the stipulation to receive half profit from the sale, charging him the articles at wholesale market price. One must also not furnish some one with money in order to buy and sell articles for it, for half profit, provided he pays him separately as a laborer for his trouble. It is also not

allowed to hatch hens for half profit, and also not to appraise calves and foals, according the value after two years, and making a half of it a compensation for the raising of them. Should it happen, however, that they die (the raiser must suffer half of their loss), provided the raiser is paid separately for his trouble and food. One, however, may accept the above animals without any stipulation for half profit. And then they shall be kept calves until they become threefold and an ass until it is fit for carrying burdens.

GEMARA: A Boraitha in addition to this Mishna states "as a laborer," and Abyi explains "as a laborer of this profession."

The rabbis taught: "How much should he be paid separately? According to R. Meier: More or less, but it must be stipulated between them; according to R. Jehuda, it is sufficient even if he gives him a meal or some fruit. R. Simeon b. Johai, however, maintains that he should receive the amount a laborer is entitled to."

The rabbis taught: "Goats, sheep, and all other animals which are fed but do not labor, must not be appraised for the half. R. Jose b. R. Jehuda, however, says: Goats and sheep may, as the raiser has the milk and the wool for use, and they yield wool by being shorn, by passing through water, and by being plucked (in passing bushes, etc.); and also a hen, because she is laboring for her food (as she lays eggs)." (Says the Gemara:) And according to the first Tana (of the Boraitha), their milk and wool are not sufficient for his trouble and food? If agreement was that the raiser shall use milk and wool for himself, all agree that it is sufficient; the point of their differing is if it was agreed that the raiser should use only the whey of the milk, and whey and refuse of wool; the first Tana holds in accordance with R. Simeon b. Johai, who demands the full payment of a laborer, and R. Jose holds in accordance with his father, R. Jehuda, who says above, that one meal suffices.

The rabbis taught: "A woman may say to her neighbor who has eggs, 'You may give me four eggs and I'll let my hen sit on them for two little chickens she will hatch.' If, however, she says, 'I have the hen and you the eggs, let us divide the little chickens,' it is not allowed according to R. Simeon. R. Jehuda, however, allows this."

The rabbis taught: "In the places where it is the usage to pay the raiser for carrying the calves on his shoulder, it may be appraised, and it is not necessary to act differently to the custom of the country." R. Simeon b. Gamaliel said: "A calf and a

foal may be appraised with their mother and without any separate payment, even in those places where they pay separately for carrying calves (as the mothers are with them, there is no trouble in carrying them, and they are also fed by their mothers)." Said R. Nahaman: "The Halakha prevails in accordance with R. Jehuda, with R. Jose his son, and with R. Simeon b. Gamaliel." The sons of R. Ilish were summoned for a note which was issued by their father for half profit and half loss. Said Rabha: "R. Ilish was a great man, and he would not have issued a prohibited document; the note, therefore, may be explained that if his partner desired to obtain the half profits, then he had to suffer two-thirds of the loss, and if R. Ilish would have to suffer the half of the loss, then his partner would take two-thirds of the profit for his trouble." Said R. Kahana: "I told this to R. Zebid of Nehardae, and he rejoined: (It is not necessary to give the above explanation) about the note of R. Ilish, as it may be R. Ilish had some benefit from his partner, and it is in accordance with R. Nahaman, who said that the Halakha prevails with R. Jehuda; and I answered him: It was not taught by R. Nahaman, 'the Halakha prevails,' but the system of the above-mentioned sages is one and the same, and it seems to be so from his expression, 'R. Jehuda, R. Jose his son, etc.' Should he desire to state that the Halakha prevails according to them, he would teach the Halakha prevails in accordance with R. Jehuda, who is more lenient than all others."

Rabh said: "If one gives a calf for raising, with the stipulation that the profit and loss shall be equally divided, and besides a third increase of the present value should belong to the raiser, it is allowed." Samuel, however, maintains: "How would be the case if there should be no increase? Should then the man labor for nothing? Therefore he must fix a dinar for his labor." But Rabh himself is also of this opinion, as he said that the head of the calf belongs to the raiser. Is it not to assume that the head is an additional compensation to the third increase, said above? Is it not for the purpose that, should there be no third increase as agreed, he takes for his labor the head; hence here is the fixed dinar which Samuel desires? Rabh's decision that a third increase suffices without any other compensation means when the raiser has his own cattle to raise, as people say: "It is the same trouble to feed one as many."

R. Elazar of Hagruniah bought a cow which he gave to his gardener for raising, and gave him besides the half interest also

the head for his trouble. Said his wife to him: "If he would be an equal partner to you by giving the half money of the half cost he would give you the *אליה* \* in your share." Afterwards they bought one in partnership and divided the *אליה* and R. Elazar said: "Let us divide also the head." Said his gardener: "When you issued the whole amount for the animal, I took the whole head to myself, and now when I have the half money in it, I shall take a half only?" R. Elazar answered: "When the money was my own, if I would not add a little to your share it would appear usurious; but now we are equal partners, and if you claim you had more trouble than I, the food for it was used from my garden, and while you were engaged therein, there was not much trouble feeding it."

The rabbis taught: Until what time must the raiser trouble himself with the appraised animal given to him for raising? Symmachos said: "With mules eighteen months, with asses twenty-four months, and if one desires to divide within that time, his partner may prevent him, for the years are not equal; as in the second year the trouble of feeding is more than in the first." There is another Boraitha: "Until what time must one trouble himself with the offspring of the appraised animal? With little animals, as goats and sheep, thirty days, and big animals, fifty days." R. Jose, however, said: "With little animals, three months, as their teeth are small, and he has to see what food is fit for them, and from that time further on the raiser takes a half of his value and a half of the increase belonging to his partner (as he takes the same of the mother)."

R. Menasya b. Gadah took his half and half of the increase of his partner; when he came before Abayi, he said to him: Who was the appraiser? [Perhaps the appraisement was not correct, and, secondly, this city is counted among those where it is customary to raise the offspring until grown up, and there is a Mishna that where the custom is to do so no change is to be made.]

There were two Samaritans who had done business with each other. Afterwards one of them divided the money without knowledge of his partner, and the case was brought before R. Papa, and he decided that his act was correct, as R. Nahaman

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\* The term in text is *alitha*. Rashi explains *alitha*, which means the fat of the tail. However, it seems to us this is correct only of a sheep, but not of a cow; it may be, however, that they bought a sheep in partnership.

said that cash money may be considered as divided. The next year they bought wine in partnership, and one of them divided without knowledge of his partner, and the case came again before R. Papa, who asked: Who has appraised for you? Said the plaintiff to R. Papa: "It seems to me that the master is partial" (as last year he decided in his favor, and also in this case). Said R. Papa: "Why then? Last year you did not complain that your partner took the better coins and left you the worse ones, and as there was cash, which need not any appraisement, he had the right to divide without your knowledge; but in this case, everybody knows that there is a difference between one kind of wine and another. How could you do it without knowledge of your partner and without any appraisement by a specialist?" It is mentioned above, R. Nahaman said money is considered as if it would be divided; however, this is only if the coins were equal, as, *e.g.*, all of them were circulating ones, or if old coins, which have more weight but are not in frequent circulation; but if they were of both kind, it must not be done without knowledge of the partner.

R. Hama used to rent zuzes daily for the smallest coin for each zuz, and he lost his money. [He thought that because he had not given it as a loan, but as a lease, it is allowed to do so as with another erub; in reality, however, it cannot be compared, as the same erub is to be returned, and if it was spoiled it is recognized; but here the same zuz is not returned, as he took it for business and returned him another one, and therefore it is considered a usurious loan.]

Rabha said: One may say to his neighbor: "I will lend you four zuz to keep for a longer time with the stipulation that you shall lend to so-and-so a zuz;" as the law has prohibited only usury that came direct from the borrower to the lender. The same said again: One may pay money to any one for giving a good reference to the money broker in order to borrow money from him. As Abba Mar, the son of R. Papa, used to take wax vessels from the wax dealers for reference to his father, that he should lend them money; and when the rabbis told R. Papa that his son took usurious money, he answered thus: Such a usury he may take; the law has forbidden only usury which comes from the borrower to the lender. Here, however, he is paid for his reference, and this is allowed.

MISHNA VII.: A cow, an ass, and all animals which are laboring for their food may be appraised, that the increase shall

be divided equally. In the places where it is customary to divide the offspring while they are yet small, it should be so done; and where it is customary to raise the offspring until they are grown up, it should be so done. R. Simeon b. Gamaliel said: "That a calf and a foal may be appraised with their mothers." One may say to a farmer: If you would lend me some money which would enable me to manure your field, I shall give you twelve kur of grain for it, instead of the ten you demand; and the farmer may accept it without fear of usury (as the kurs added are considered for the use of a manured field).

GEMARA: The rabbis taught: This which is said above is allowed only with a field, but not with a store, and not with a boat; *i.e.*, the hirer must not increase the price for rent, in case the owner lends him money to buy stock for sale, or to buy a cargo for his boat. Said R. Nahaman, in the name of Rabba b. Abuhu: It may happen that the same should be allowed to be done also with a store if he lends money to paint and decorate it, in order to draw customers; and also with a ship, in order to improve it with masts of which the hirer has the benefit in that it will sail faster; and if he borrows money for this purpose, he may increase the rent of the above-mentioned, and it is not considered usury, as the owner may raise his rent for a decorated store and an improved boat.

Rabh said: "One may rent a boat with the condition that, should it break, the hirer is made responsible." Said R. Kahana and R. Asi to him: "If he takes rent, he, the owner, must be responsible for damage, and when the hirer is responsible for it, then he must not pay rent." Rabh was silent. Said R. Shesheth: Why was Rabh silent? Was he not aware of the following Boraitha, although it was said that an iron sheep must not be accepted from an Israelite, *i.e.*, one must not both be responsible for the article hired, in case it becomes injured while laboring, and at the same time pay rent for it; but he may do so with a non-Israelite. It was said, however: One may say: I take your cow for the price of thirty dinars in case it will die; but all the time it will be alive in my hands I will pay you monthly a salah for her labor. This is allowed, because the appraisement of the cow was in case she is dead, but not when alive. Said R. Papa: The Halakha prevails that a ship may be hired for rent and at the same time the hirer should be responsible, and the custom of the sailors was that they pay rent when they take possession of the boat, and pay the value of the damage in case such occurs. Is

this then depending upon custom (as he must pay for the whole boat in case it breaks, then it is a sale, and the rent paid should be considered usury for awaiting of payment)? Because it was said in the above Boraitha that it may be done with a cow, as the appraisement was after death, the same is the case here. And as this law was accepted, it became customary.

R. Annan, in the name of Samuel, said: Money belonging to orphans may be lent for usury. Said R. Nahaman to him: Because they are orphans should we permit prohibited things for them? Orphans who are consuming that not belonging to them may go to their bequeather; but as you said the Halakha in the name of Samuel tells me the fact, you have seen that Samuel did so (as it cannot be that Samuel would declare that such an unlawful Halakha should be practised). And he answered: There was a copper kettle belonging to the orphans of Mar Uqba, which was under the control of Mar Samuel, who used to weigh it at the time of giving it to the hirer, and did the same at its return; and in case of the weight diminishing, got paid for it besides the payment for using it. Hence if it would not be allowed to lend the money of orphans for usury, how could he demand both to be paid for the diminished weight and at the same time to take rent for using it? Said R. Nahaman: "Such a thing may be done even with bearded orphans, as the copper of the kettle decreased in value by using it, for which the orphans get no separate payment, as they take the value for the diminished copper only." Rabba b. Chila, in the name of R. Hirda, according to others, R. Joseph b. Hama, in the name of R. Shesheth, said: "Money belonging to orphans may be used for a business that is very likely to bring profit, and with small chance of loss."

The rabbis taught: "One who lends money for a business which is very likely to bring profit with little chance of loss, is wicked; for one which is likely to bring loss and far from profit, is pious." Equal to both, this is the custom of every just business man. Said Rabba to R. Joseph: How, then, should be done with money belonging to orphans? And he answered: "It shall be deposited in court, and the court shall furnish them with means for livelihood from time to time, according to their need." But if so, then the whole amount will be consumed? Said R. Ashi: "We look for a man who is rich, trusted, listens to the Law, and never accepts a rebuke from the rabbis, and we give the money to him by the court for use in a business which is likely to bring profit with small chance of loss."

**MISHNA VII.:** An iron sheep must not be accepted from an Israelite (*i.e.*, to lend money with the understanding that the debtor shall always be responsible for it, and at the same time he shall pay the half profit it brings), as it is direct usury. This, however, may be done with non-Israelites, as it is allowed to lend them, and borrow from them, for usury. This is also allowed to be done with a proselyte who obligated himself not to worship idols, but did not obligate himself to observe the Hebrew laws. An Israelite may lend to his race money belonging to non-Israelites for usury, provided the latter are aware of it, but not otherwise.

**GEMARA:** Is it to be assumed that the iron sheep in question is considered under the control of the acceptor? Then it would be a contradiction to the following Boraitha: "If one accepted 'iron sheep' from a heathen, the offspring are free from the law of first-born; *i.e.*, that if for the money in question was bought cattle, which brought young ones, the first-born must not be given to the priest, although it was in the hand of an Israelite (hence we see that it is considered under the control of the lender and not of the acceptor, for if it were under the control of the latter, why should the first-born of the half belonging to the Israelite be free from the above-mentioned law?). Said Rabha: The reason is, because, should he not repay the money, the heathen would take possession of the cattle, and if even this would not be sufficient he would also take the young ones; and so it is considered that the hand of a heathen rests in this case, and under such circumstances the law of the first-born does not exist.

It is written [Prov. xxviii. 8]: "He that increaseth his wealth by interest and usury, will gather it for him, that will be kind to the poor." What is meant by the expression, "that he will be kind to the poor"? Said Rabh: For example, as the King Sabura, who collects money from the Israelites for the purpose of distributing it among the poor of the Persians. Said R. Nahaman: Huna told me that not only usury-taking from an Israelite is meant, but also from a heathen; and Rabha objected this statement from [Deut. xxiii. 21]: "From an alien thou mayest take interest"; and he answered: The expression in Hebrew is *tashikkh*, which means you may give him interest if you need money and you cannot get it without; but to your brother (an Israelite) you must not do so under any circumstances. But is it not written plainly further on: "But from thy brother thou shalt not take interest?" It is written to show that he who does so transgresses both a positive and a negative command-

ment. He objected again from our Mishna, which states that with a non-Israelite it is allowed. Said R. Hyya b. R. Huna: The Mishna allows to do so only for the need of his livelihood, but not more than he needs, as the rabbis had prohibited the taking of usury from all mankind.

There are some who applied the above statement of R. Huna to the following: R. Joseph taught: It is written [Ex. xxii. 24]: "If thou lend money to my people to the poor by thee," which signifies, if there is one of thy people, and an alien, the former is to be preferred. If there were a poor and a rich man, the poor is to be preferred; poor of thy city and poor of another one, the former has the preference. And to the question, Is it not self-evident that an Israelite is to be preferred? said R. Nahaman: Huna told me that it means that an Israelite should be preferred even if he can take usury from a heathen, and to the Israelite he must give it for nothing.

There is a Boraitha: R. Jose said: Come and see how the usurers are blind. If one calls his neighbor "wicked," his neighbor tries to take revenge on him as soon as he is able to do so, and the usurers bring witnesses, a scribe, a pen and ink, and write and sign that so-and-so reasons away the God of Israel (who has prohibited the taking of usury).

There is another Boraitha: R. Simeon b. Elazar said: One who has money and lends it without usury, to him applies the verse [Psalm xv. 5]: "That putteth not out his money for interest and taketh no bribe against the innocent. He that doeth these things shall not be moved to eternity." Which signifies that he who takes usury will lose all his possessions. But is it not a fact that they who do not take usury are also stricken with poverty? Said R. Elazar: The latter are to be raised again, but those who take money, if they fall will never rise again.

The rabbis taught: It is written: "Thou shalt not take of him usury or increase" [Lev. xxv. 36], but thou mayest be a surety for him. A surety for whom? For the lender\* who is an Israelite? Is there not the following Mishna: The following transgress a negative commandment: the lender, the borrower, the surety, and the witnesses?—*i.e.*, to an alien. But is it not a fact that the aliens summon the surety first? Hence it should be considered that the surety takes usury from him. Said R.

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\* *I.e.*, the lender shall not collect more than is due to him in case the debt is paid in time.

Shesheth : It speaks of when the alien has promised that in case of a suit he shall obey the decision of the Jewish court. But if so, then usury should not be taken from him at all. Said R. Shesheth : He promised only to obey the decision of the Jewish court in case of a suit, but not to observe the law of usury.

*An Israelite may lend money belonging, etc.* The rabbis taught : One may lend money belonging to an alien with his knowledge, but not otherwise. How so ? If an Israelite borrowed money from an alien for usury, and when he was about to return it another Israelite said to him : Give the money to me and I will pay you the usury you have to pay to the lender ;—this is prohibited. If, however, he takes him to the lender, he may do so ; and the same is the case if an alien has borrowed from an Israelite for usury, and when he is about to return it to him, another Israelite meets him, and asks to have the money lent to him for the same interest he has to give to the Israelite, it is allowed ; if, however, the alien takes him to the lender, it is prohibited. The prohibition of the last part is correct ; but why is it allowed in case the Israelite takes the money belonging to the Israelite and pays usury ? Is it not a fact that in the case of an alien no messenger is to be considered ? Hence, even with the knowledge of the heathen, it should be considered that one Israelite takes direct usury from another Israelite ? Said R. Papa : It means, he takes him to the alien that he may hand him the money personally. Is this not self-evident ? Lest one may say that as the alien does it through the Israelite it is not allowed, he teaches us that it does not matter.

The rabbis taught : An Israelite who borrowed money from an alien for usury, and afterwards added the usury money to the principal amount, and then took a note from him for the whole sum and then the lender became a proselyte : he may collect the whole amount. If, however, the note was taken after he became a proselyte, he collects the principal amount, but not the usury. The same is the case with an alien who borrowed money from an Israelite, and became a proselyte ; if the note for the principal amount including the usury was given by him while he was yet an alien, the whole amount is to be collected ; but if after he became a proselyte, the principal amount only is to be collected. R. Jose, however, maintains that even then the whole amount may be collected ; and Rabha, in the name of R. Hisda, quoting R. Huna, said : ~~So the~~ Halakha prevails ; and he himself declared that the reason of R. Jose's statement is that people

shall not say that he became a proselyte on account of this money only.

The rabbis taught: "For a note in which usury is mentioned the lender must not be allowed to collect even the principal amount, which he must forfeit as a fine. So is the decree of R. Meier. The sages, however, maintain that the principal amount *is* to be collected." What is the point of their differing? R. Meier holds that the permissible amount may be imposed as a fine for that of the prohibited one, and the rabbis hold that it may not.

There was a man who had pledged his vineyard to a lender, who kept it for three years, and afterwards said to the owner: If you sell it to me, good; but if not, I will hide the document of the pledge, and claim that the vineyard was *bought* by me (and as it is in my possession already three years, I will be trusted according to the law of (*Hasaka*) occupancy. The owner then assigned his vineyard in presence of witnesses to his minor son, and afterwards gave a bill of sale to the lender. This sale is certainly not valid; but the money which the lender has given for the bill of sale, is it to be considered as a loan with a note which is to be collected from an encumbered estate, or is it considered a loan without a note which is not to be collected from such estate? Said Abayi: Is this not the case of which R. Assi said above that when one admits his signature to the note, it is not necessary to have it approved by the court, and it is to be collected also from an encumbered estate? Said Rabha to him: What comparison is it? In the case of R. Assi, where the borrower admits that he owes the money with a note, another note can be written even if the original is lost; in this case, however, the bill of sale was written unwillingly, and another one cannot be written. Mrimar repeated Rabha's statement in the presence of Rabina, who cited to him then the statement of R. Johanan on the explanation of the Mishna, "that notes which were written with a previous date are of no avail"; and to the question, Why should it not be collected from the later date? R. Johanan answered: It is to be feared that he will collect from an encumbered estate at the previous date. Let him then say that the bill of sale is invalid because, if lost, it cannot be rewritten from the date of the first writing. And he answered: What comparison is it to our case? There it cannot be rewritten from the original date, but it can be rewritten with a later date; here, however, it cannot be rewritten at all for the reason said above.

**MISHNA VIII.** : One must not buy articles to deliver during the year, for a certain price before the market price is fixed. He may, however, do so afterwards—even when the seller does not possess as yet the articles bought—for the price he pleases, as, if he does not possess them, he can buy them from another. If the seller was first in the harvest, the buyer may stipulate the price with him for the sheaves, crop of grapes, vat of olives, clay balls of a potter, and lime when it was already in the kiln, and also for manure of the whole year. R. Jose, however, maintains that he must not do so with manure unless he has it ready for delivery; the sages allow it. For all mentioned above he may make the stipulation that if the price will decrease he shall deliver them for the lower price. R. Jehuda says that to this effect no stipulation is necessary, as the buyer may claim in such a case the existing price or the return of his money.

**GEMARA** : R. Assi said in the name of R. Johanan : The price for the whole year must not be stipulated for at the existing price of the large cities, as these prices are changeable.

The rabbis taught : “One must not buy articles to deliver during the year before the market price is fixed. If, however, the new articles were four for a *salah* and the old ones three, the price must not be fixed until it will be a standing price for both of them. If mixed grain from different fields sold four measures for a *salah*, and from a single one three, the price must not be fixed until the market price will be fixed for both.” Said R. Nahaman : A price may be fixed for the mixed one, as the existing market price for such grain. Said Rabha to him : Why should this differ from grain from a private field? You may say that, if the seller does not possess the mixed grain, he can borrow from another seller of mixed grain; is it not the same with private men? And he answered : A private man would consider that it is humiliating for him to borrow from a dealer of mixed grain, or, if you wish, I may say that one who gives money to a private man intends to get from him the best in the market.

R. Shesheth, in the name of R. Huna, said : “One must not lend money with the understanding that if it is not returned at a certain time the borrower shall furnish him articles at the existing price (*i.e.*, although this is allowed to be done in the manner of buying and selling, with a loan it is not allowed, as it appears usurious). Said R. Joseph b. Hama, according to others, R. Jose b. Abba, to him : Did, indeed, R. Huna say so? Was he not questioned whether it was allowed to be done as the stu-

dents of the college did, who borrowed money in Tishri and repaid with fruit in Tebeth at the price of Tishri? And he answered: There is wheat ready for sale in the cities of Hini and Chili which is always at a low price, and they can buy and repay their debt with that. We see then that he has allowed such a loan? He was previously of the opinion that it must not be so done; afterwards, however, when he heard that R. Samuel b. Hyya said in the name of R. Elazar that this may be done, he retracted from his previous opinion and decided that it may be done.

The rabbis taught: If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell it to him at the price of the place he intends to go to (I will sell it here and will use the money until a certain time)—if the seller takes the responsibility of the stock while on the road it is allowed, but otherwise it is not (because it is considered a loan, and the increase in price appears usurious). If one was about to deliver his fruit to a certain city in which the price of it was higher, and some one told him that he has the same fruit in the above-mentioned city and he will deliver it to him there in exchange for the fruit in his possession here, then, if he really possesses the same in the above-mentioned city at the time he takes the exchange, it is allowed (because the fruit of that city is considered from now under the control of him who gives the exchange for it here). But if the one who offers the exchange has it not ready for delivery as yet, it is not allowed. For the grain dealers, however, it is allowed to borrow money with the understanding to repay it with grain for a lower price than the existing one in that city, without fear that this appears usurious. Why so? R. Papa says: Because with his money he opens the door for them to buy grain at the lowest price at every place it is to be found; so he enables them to repay him with the grain at a lower price, even immediately after the loan, and therefore it is not to be considered usury for the prolongation of time for repayment. R. A'ha b. Iqa, however, says: It is favorable to them for the wholesale grain dealers to know that they sold their grain at a low price, so that the dealers will make the price of their grain still lower, so as not to lose their custom. What is the difference between these two reasons? If the grain seller was a new one who was unknown as yet to the country grain sellers, then, according to R. A'ha b. Iqa's theory, it is not allowed for him to do so. In Sura four measures of grain could be bought for one zuz; in Kahfri there were sold six for one zuz; and Rabh had given money to the grain dealers in Sura

to buy grain for him in Kahfri at the rate of five measures for a zuz, taking the responsibility of the grain while on the road. But if he was responsible for them while on the road, why didn't he take six, as was the existing price in Kahfri? With such a prominent man as Rabh it is different (he allowed them one measure for their trouble). R. Assi questioned R. Johanan: May this be done with other articles besides grain? And he answered: Rabbi was about to do so with frippery, and R. Ismael b. R. Jose restrained him from this. With regard to a vineyard (*i.e.*, to buy the products of it, when they are not as yet ripe, at a low price, by advancing money for the same), Rabh did not allow this, because the price of the ripe fruit will be higher, and it appears as if he were taking usury for his money. Samuel, however, permitted this, as the buyer takes the risk of his money in case the vineyard may not yield the products, or in case they may become spoiled. Said R. Shima b. Hyya: Rabh, however, admits that this may be done with calves\* (*i.e.*, to buy the offspring of the cattle for next year), and there is a great risk of miscarriage and other accidents. Samuel said to the grain dealers who used to give money to the farmers for the products of the next year: "I order you to help the farmer in his labor on the field, in order that you may acquire title to the body of the field, as, if you will not do so, your money will be considered as a loan, which is not allowed." And Rabha, also said, to the watchmen of the crops (who used to receive their payment from the grain when ready for delivery): "I order you to help the farmer in his labor all the time he is laboring, until harvest, as if you were hired for this purpose; for according to the law you would have to be paid only after all the labor is done, and then, when you receive a larger quantity of the grain than your trouble was worth, it would be considered that the farmer lowered the price for you, which is allowed. (If, however, you will not follow my order, the larger quantity would be considered as arising from waiting for the money which ought to be paid to you every day for watching, and appears usurious)." The rabbis said to Rabha: "You, master, consume usury, as usually the farmers hire their fields for the quantity of four kurs for each field, with the understanding they shall harvest it in Nissan, and you wait until Eyor and take six kurs." And he answered: "Your acts are unlawful, as the field is hired to the gardener, and if you com-

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\* This is in accordance with the explanation of Hananal in Tosphet. Rashi, however, explains otherwise, which is not understood easily.

pel him to harvest in Nissan you are injuring him in many kurs, as the grain is not ripe as yet; but I am awaiting until Eyor and benefit him, and the two kurs more I take is for hiring the field and not for awaiting the payment of the money." There was a certain alien who pledged his house to R. Mari b. Rachel,\* and afterwards he sold the same to Rabha. At the elapse of one year after the pledging took place R. Mari submitted the rent for the next year to Rabha, saying: The reason why I did not submit the rent to you for the first year is because a pledge without a fixed time is a year, and if the alien would like to repay me within the year, he could not do so without my consent; but now, when the time is over, I have to submit to you the rent for your house. And Rabha rejoined: "I did not know that the house was pledged to you, and if I were aware of it, I would not buy it; but now we have to act according to the Persian law, which dictates that the buyer has not to collect the rent until he pays the whole amount, and I will also act so. I will not take the rent from the house until the debt on the house will be paid to you by the seller.

Said Rabha of Barnish to R. Ashi: "I call the attention of you, master, that the rabbis are consuming usury, as they pay for wine in Tishri and choose it in Teveth when it is already in good condition, and this appears usurious, as, if they would take it in Tishri, they would suffer the damage if spoiled; but by advancing the money, the responsibility rests on the seller." And he answered: They advance the money for wine and not for vinegar, and the wine which becomes sour during that time was so already in the beginning of the season, but it could not be so recognized; it is, therefore, lawful for them to take the wine for which they have advanced their money. Rabina used to give money to the inhabitants by the shore of Shanwatha before the time of wine-pressing, that they should deliver him the wine thereafter, and they delivered him a barrel or two more than he bought. He came to question R. Ashi whether he could accept it or not, as it appeared usurious. And he answered: You may; as it is only a gift. Said Rabina: But I am afraid this should be considered robbery, as the estates they possess were occupied by

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\* Rachel was the daughter of Mar Samuel, who was captured by heathens, married a heathen who afterwards became a proselyte, and his name was Issur the Proselyte. Her pregnancy began while he was yet a heathen, and therefore R. Mari was named after his mother, *Rashi*. (There was another Mari b. Rachel mentioned in Sabbath, p. 111, and his father Rabba. See there).

them after the owners of them escaped for not paying taxes, and the possessors paid the taxes to the Government (and as it is a law that estates cannot be considered robbed, they still belong to the previous owners; consequently the products are robbery). And R. Ashi rejoined: The estate is pledged for the taxes, and the Government says that the estate on which taxes were not paid is to be pledged to him who pays; consequently their occupation is lawful.

R. Papa said to Rabha: I call the attention of you, master, to the rabbis, who pay head-tax charge for those who cannot pay them, and they are laboring with them more than ought to be. And he rejoined: If I were to die a day previous you would not be aware of what R. Theshsth said, namely: The surety for these people lies in the archives of the king, and the king has ordained that he who pays no *charge* shall be made the servant of him who pays (for him).

R. Seuram, the brother of Rabha, used to compel doubtful characters to carry the palangin of Rabha, and Rabha approved his act from the following Boraitha: "Whence do we deduce that one, whose habit is not in accordance with the law, may be made to labor?" From the verse [Lev. xxv. 46]: "You may hold them to service forever, and \* over your brethren, the children of Israel." Lest one say, however, that the same may be done with one who is acting rightly, therefore it is written: "But over your brethren . . . ye shall not rule with rigor."

R. Hama said: If one gave money to his comrade to buy wine for him, and he neglected to do it, the latter must deliver to him wine at the price current at the dock of Zulschafat (a place where the wholesale wine dealers brought their stock for sale). Said Amimar: I repeated this Halakha to R. Zbid of Nahardea, and he said: R. Hama's decision holds good only when he ordered him to buy any wine for him; but when the order was to buy a certain kind of wine, the messenger has no responsibility, as who can be sure that the wine ordered could be gotten easily? R. Ashi, however, maintains that even if the order was for any wine, he is not to be made responsible, as it is only an *asmachta* . . . which gives no title. But why should this case be different from the Mishna in Chapter IX. of this tract, that if one hired a field for sowing purposes, and did nothing, he must pay according to

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\* The Scripture reads *ubachiecham*; literally, "and with your brothers." Leeser translates according to the sense, "but." The Talmud takes it literally, and makes this word correspond both to the former and the latter sense, as explained in the text.

the appraisement of the products it would yield when cultivated? Then it was in his power to cultivate the field, and therefore he is responsible; but here it may be that he could not find the wine required.

Rabha said: If one of a company of three partners has given money to a messenger to buy something, it is to be considered for the company, and not for himself. However, this is only in case their money is kept in one sum; but if the money of each partner is tied and sealed separately, the things bought are only for him who gave the money.

R. Papi, in the name of Rabha, said: "The mark which is usually placed on each barrel of wine when sold gives title to the buyer" (even without any drawing). To what purpose was this decision made? According to R. Habiba, to give title so that the seller should have no right to retract; and according to the rabbis, if the seller has retracted, the sale is invalid, but he has to accept the curse of "who has punished the generation of the flood," etc., mentioned in the above Mishna. And so the Halakha prevails in places where it is customary to make such a mark a final act of the sale.

*If the seller was first in the harvest, etc.* Said Rabh: If the grain was to be finished with two kinds of labor only, he may fix the price; but if he requires three kinds, he must not. Samuel, however, maintains that if the finishing depends upon the efforts of a human being, even if there were a hundred kinds of labor for finishing, he may; but if he depends upon Heaven (as, e.g., rain or sunshine), even if there is only one kind of finishing, he may not. But did not the Mishna state that one may fix the price on sheaves, although he must dry, thresh, and winnow them (hence there are three kinds of labor before it is finished)? It may treat of when the sheaves were already spread in the sun for drying. But according to Samuel, that the price must not be fixed even if one depends upon Heaven, and there is the winnowing which cannot be done without an extraordinary wind. This also can be done with sieves.

*Clay balls of a potter, etc.* The rabbis taught: "The price must not be fixed on the clay balls of a potter unless they are made." So is the decree of R. Meier. Said R. Jose: "This is in the case of white earth, which is not so frequently in the market; but of black earth, as from the village of Hanania or Shihin and neighborhood, he may do so even before they are made, as, if he does not possess the material, he may find it in the market. Amimar

used to give the money when the earth was brought to the pottery. According to whom did he act? If according to R. Meier, it must not be done until ready; if according to R. Jose, it may be done even before the earth was brought? His act was in accordance with R. Jose's decision. But in the place of Amimar the earth was dear, and not so frequently found; when the earth was brought he relied upon the sellers and gave the money; otherwise, he did not.

*And also manure of the whole year, etc.* Is not the statement of the sages the same as that of the first Tana? Said Rabha: They may differ concerning the rain-season, in which is allowed to be done, in accordance with the decision of the first Tana; and according to the sages, it may be done only in the sun-season, but not in the rain-season.

*For all mentioned above, etc.* There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law; in the meantime the value of the equipment was reduced (and the father-in-law refused to receive it for the value stipulated), and when the case came before R. Papa he decided that if the price was stipulated at the rate existing when the goods were to be delivered, then he must give for it the existing price, and if this stipulation was not made, he has to accept it at the previous price. Said the rabbis to R. Papa: And even then why should he pay him the higher price? The money paid does not give title? And he answered: My decision also was only concerning the curse mentioned in the Mishna. If it was stipulated, and the seller retracted, *he* has to accept the above curse; and if it was not stipulated, and the buyer retracts, then the above curse applies to the latter.

**MISHNA IX.**: One may lend his gardeners wheat to return him in the harvest-time the same measure, for the purpose of sowing, but not for consuming. (This was stated because) Raban Gamaliel used to do so with his gardeners, but if afterwards the price changed to a higher or a lower one, he always took the lower price to benefit the gardener, not because so was the Halakha, but because he wanted to act rigorously for himself.

**GEMARA:** The rabbis taught: "One may borrow his gardener's wheat, etc., for sowing, if he has not started work, but not if he has." Why did not the Tana of our Mishna make a difference, when the Tana of the Boraitha did? Said Rabha: R. Aidi explained to me thus: The Tana of the Mishna speaks of a place where the gardener usually sows the field with his own wheat, and there is no

difference whether he started to work or not. As long as he did not furnish the seed the owner may eject him; consequently, if he lends him his wheat, it is not considered a loan, but as a stipulation that he shall work for the owner of the field, and the owner shall receive from the share of the gardener that measure of grain which was advanced to him (and therefore, no matter if afterwards the price was raised, it is not usury). And the Tana of the Boraitha speaks of a place where usually the owner of the estate furnished the seed, and he (the owner) has changed the custom of his place; because his field was in good condition he made the gardener furnish the seed. Then, if the gardener has not started his work as yet, so that the owner may eject him, the above stipulation may be made, as it is considered a business matter, not a loan; but if his work is already begun, for which reason he cannot be ejected by the owner, and then the gardener is compelled to borrow the seed from the owner, it is considered a loan; and if the grain becomes higher, if he returns him the same measure it appears usurious.

The rabbis taught: "One may be asked by his neighbor for a loan of grain, to return the same at a certain time if the price will not be lower; but if it will, then he shall be paid in money at the price now existing. If, however, such stipulation was not made, if it became lower, he may return him with grain; if higher, he has to pay him in money at the price existing at the time borrowed, according to the explanation of R. Shesheth.

MISHNA X.: One must not lend a kur of wheat that it shall be returned to him from the barn (for fear it may become dearer). He may, however, lend him until his son came with the key. Hillel, however, forbids even this, as he used to say: A woman must not lend a loaf of bread to her neighbor, unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf will appear usurious.

GEMARA: Said R. Huna: "The statement of the Mishna that one may borrow wheat until he found the key: it is allowed only to borrow as much as he possesses; if he possesses a saah, he may borrow one; if two, two." R. Itzhak, however, said that even if he possesses only one saah, he may borrow many kurs (as the title of this saah is not secured to the lender and he may use it for himself; consequently the borrowed grain is to be returned from that of the market, and this saah he possesses remains free; on which he may borrow many saahs). Taught R. Hyya to support R. Itzhak: ("One must not borrow wine or oil if he does not pos-

sess) a drop of wine, a drop of oil." From which it is to be inferred that if he possesses one drop he may borrow upon it many drops.

*Hillel forbids, etc.* Said R. Nahaman in the name of Samuel: The Halakha prevails in accordance with Hillel. (The Gemara, however, says :) The Halakha does not prevail in accordance with R. Nahaman's statement.

*As he used to say, etc.* Said R. Jehuda in the name of Samuel: Hillel stands alone with his statement, as the majority of the sages hold that it may be borrowed and repaid anonymously (without any stipulation). The same said again in the name of the said authority: Society men transgress who are not very particular with each other regarding the size, weight, and number of things borrowed and returned (if they borrow from one another, and do not care to make return in kind and in the same manner, they transgress the commandment, "Thou shalt not cheat thy brother in measure, etc.," as they accept more or less than was borrowed). And also as regards violence, Sabbaths, and festivals, if they lend to each other on these days, according to Hillel, they are also accused of usury. The same said again in the name of the said authority: Scholars who know the law of usury may lend each other for interest (as they know the law, they give the interest by means of a present). Samuel said to Abuhu b. Ihi: Lend me a hundred peppus; I will return you a hundred and twenty, and it will be right (not as usury, but as a present). R. Jehuda, in the name of Rabh, said: One may lend to his sons or family for usury, to give them an idea how hard it is to pay usury and to understand the great punishment of it. (Said the Gemara :) This, however, must not be practised, as they may get accustomed to it, and afterwards lend money for usury.

MISHNA XI.: One may say to his neighbor: Help me in weeding or in digging around my vineyard to-day, and in return I will help you on some other day; but he must not say: "Help me in weeding and I will help you in digging, or *vice versa*. All the days of the rainy season are considered alike, and the same is the case with the days of the sunny season; but one must not say: "Help me in the sunny season and I will help you in the rainy season," or *vice versa*.

Raban Gamaliel says: There is a kind of usury which may be named preceding usury, and also another kind which may be named succeeding usury. How so? If one is to borrow money from another, and he sends him a present previously for this

purpose, it is a preceding usury; if one has kept the money of his neighbor for a certain time, and on repaying he sends a present, saying: "This is for the favor you did in leaving the money in my hand for such a time"—this is succeeding usury. R. Simeon says: There is also usury of talk. One must not say: I inform you that such and such a man, whom you are anxious to see, has arrived (and for this information you shall favor me with a loan). The following transgress the negative commandment of usury: The lender, the borrower, the surety, and the witnesses. The sages add also the scribe. They transgress the following commandment [Lev. xxv. 37; also *ibid.* 36, and Ex. xxii. 24, and in the verse: "Ye shall not lay upon him usury;" and finally, Lev. xix. 14]: "Ye shall not put a stumbling block before the blind, but thou shalt be afraid of thy God. I am the Lord."

GEMARA: There is a Boraitha: R. Simeon b. Joa'ling said: Whence do we deduce that, if one owes his neighbor a hundred zuz, and it was not customary for him before the loan to greet him first, he must not do so after the loan took place? From [Deut. xxiii. 20]: "Interest of anything, etc.," *i.e.*, that even a word must not be given as interest.

*And the following transgress, etc.* Said Abayi: "The lender transgresses all the commandments mentioned; the borrower transgresses the commandments of Deuteronomy mentioned above and of Leviticus, xix. 14. The witnesses, however, transgress the commandment of Exodus, xxii. 24."

We have learned in another Boraitha: "The usurers lose more than they profit (as said above, finally they lose all they possess); furthermore, they make Moses our master a fool, and his law untrue, saying: If he knew that usury brought great profit, he would not have written that it is prohibited."

When R. Dimi came from Palestine, he said: Whence do we deduce that if one is aware that his debtor has nothing with which to pay, he must not pass him by? From the verse [Ex. xxii. 24] cited above. R. Ami and R. Assi both said: One who does so is as if he caused his debtor to suffer from fire and water; as it is written [Psalm lxvi. 12]: "Thou hast caused men to ride on our head; we entered into fire and into water." R. Jehuda said, in the name of Rabh: Who lends money to any one without witnesses transgresses the commandment: "Ye shall not put a stumbling block before the blind." Reish Lakish adds that he who does so draws a curse upon himself, as it is written [*Ibid.* xxxi.

19]: "Let the lying lips be made dumb which speak hard things against the righteous." (Rashi explains this as meaning that in case the debtor denies the entire claim of his creditor, people usually believe the debtor and curse the creditor.)

The rabbis said to R. Ashi: Rabina adheres strictly to all that the rabbis ordained. (And to try whether it is so,) R. Ashi sent to him on one eve of Sabbath: Let the master send me ten zuz, as I have a chance to get a bargain. And he answered: Let the master appoint witnesses or write a note. And R. Ashi sent to him: Do you demand this also from *me*? And he answered: In much the more from you, master, who are always engaged in your study. It can easily escape your mind, and I would draw a curse on myself.

The rabbis taught: "The following three cry for help without being heard: Who lends money without witnesses, who buys a lord to himself, and he over whom his wife rules." What is meant by "who buys a lord to himself"? Who assigns his possessions to his children while he is still alive. Other number among the cries for help which are not heard, that of him who suffers in one city and does not try to find his livelihood in another.

## CHAPTER VI.

### REGULATIONS CONCERNING HIRING LABORERS, CATTLE, OR TRANSFERRING GOODS, THE RESPONSIBILITIES OF THE DRIVERS, ETC.

**MISHNA 1.:** He who hired servants (for the daytime), and they deceived one another, there is nothing but resentment. (The explanation is given farther on.) If one hired a driver or a carrier to bring trumpets, flutes for a wedding or funeral, or day laborers to take out flax from its steeping, or to do things which, if not done on the day of hiring, would cause damage, and they retracted: if there were no others to be hired for the same price, the employer may increase the amount of their hire, or deceive them (*i.e.*, promise an increase, but pay only according to the first agreement). If one hired servants, and they retracted, they have to suffer; if, however, the employer retracted, he has to suffer. (This is the rule :) Whoever changes or retracts his words, has to suffer for the injury caused.

**GEMARA:** The Mishna does not state that the servants have retracted, but that they have deceived one another, which is to be understood, the servants have deceived one another. How was the case? The employer appointed one of his servants to hire laborers for him, and he deceived them. (Let us see.) How was it? If the employer told him to hire men for four zuz a day, and he hired them for three, they have agreed for the price, and what has resentment to do here? On the other hand, if the employer told him to hire men for three zuz, and he promised four, then, if he told them that they would receive their payment from himself, let him pay the difference from his own pocket, as we have learned in the following Boraitha: "If one hires a laborer to do his work, and thereafter instructed him to do the work of another, he must pay him the full payment, and the reward for his labor he may demand from the employer?" The case was, he said to the laborer that the employer will pay, *i.e.*, he has not fixed any price. But let them see how the price for a day for laborers stands? The case was that there were some employers who paid three, and some who paid four, and the laborers may claim: "If

we did not understand from your words that we were to get four, we would take the trouble to look for other employers who pay four." And if you wish, it may be said that the Mishna treats of servants who possess their own fields (and they do not hire themselves unless for a higher price than the ordinary), and they may claim: "If we did not understand that we were to get four, it would be a humiliation for us to hire ourselves for a lower price." It can also be explained that the Mishna treats of laborers who are doing work only for others, and nevertheless they may claim: "Because we understood that we were to get four zuz, we troubled ourselves to make a good job." But, then, their work should be examined? The case was, they were engaged in digging a trench which was filled with water, and could not be examined. And if you wish, it may be said that the employer told the servant to hire laborers for four zuz a day, and he hired them for three; and although they agreed to work for the price, they may be angry with the hirer, saying: "Do you not hold to the verse [Proverbs, iii. 27]: 'Withhold not a benefit . . . when it is in the power of thy hand to do it'?" After all, it may be said that the Tana of our Mishna by the expression "deceived" means also "retracted" (and he treats of a direct agreement between the employer and the servants), as we have learned in the following Boraitha: "If one has hired laborers, and they have deceived the employer, or *vice versa*, they have nothing but resentment, provided they did not go to work at all. But if the drivers went for grain and did not find any, or field laborers went to work and found that the field was as yet wet, they get the full payment. However, the hire of a driver who loads his wagon and delivers it to the proper place is not to be the same as the hire of one who did not find any load; and the same is the case with laborers who are engaged in work all day compared with those who are idle the whole day. All this, however, relates to when they had not yet begun the labor; but if they began, their labor must be valued for what they have done. How so? If they agreed to cut stalks or to weave a garment for the price of two salas, and they left their work, having done the half of it, the work done must be appraised; if, *e.g.*, their work was worth six dinars, they may be given one sala (which is eight dinars), or they may be let finish their work, and take two salas. And if it was worth only one sala, they get a sala. R. Dossa, however, says the *remaining* work must be appraised, and they get the difference; *e.g.*, if the *remaining* work can be done for less than six, they get only one-half a sala (although they have

done the half of the work), or they may be let finish their work, and take two; but if the remaining work could be done for a sala, the laborer who has done the half gets a full sala. However, all this is said of such things as do not become spoiled if the work is done later; but in cases in which the work may become spoiled, he may hire other laborers on their account, or he may deceive them. How so? He may say to them: "I made the agreement with you to work for one sala; now, however, I raise it to the amount of two." To what amount *may* he increase the hire? To the amount of forty to fifty zuz, provided there are no other laborers to hire for a lower price; but if there are, and the retracting laborers tell him to get his work done by them, he has nothing but resentment.

A disciple taught before Rabh that the full amount must be paid, but Rabh said: My uncle (R. Hyga) said: "If I were the hirer, I would pay only for the loss of time," and thou sayest that he must pay the full amount. The Gemara questioned: Does the above Boraitha not add: The hire of a driver who loads his wagon, etc., is not to be the same as the hire of one who did not find any load? (Why, then, did not Rabh refer him to this Boraitha, and not to his uncle?) Rabh was not aware of the above addition. According to others, he was aware of it; and concerning this Boraitha he says: My uncle said: "If I were the hirer, I would pay nothing," and thou sayest that loss of time must be paid. But, if so, there is a difficulty. It might be said that R. Hyga speaks of laborers that he appointed yesterday to come to work early in the morning, and rain made the field wet at night, so that it was unfit for work; and in such a case the laborers ought to know it, and not come to work at all. The Boraitha treats of a case where both the employer and the laborers were not aware of the fact that the field was unfit for work at that time. And so also declared Rabh elsewhere: If one hired laborers to dig a trench, to begin their labor on the morrow, and at night rain filled the trench with water, then, if at the time he hired them he notified them of the place where the trench was to be found, the laborers have to suffer the loss (seeing the rain, they ought not to come to work); but if at the time he hired them he did not notify them of the place where the trench was to be found, he must pay for the loss of time (as they may say: How were we to know that the trench was placed where it was raining?). The same said again: If one hired laborers to wet his fields, and in the meantime rain came, the laborers suffer the damage. If, however, they become

wet by the overflow of a river, the employer must pay them for the loss of time. He said again: If one hired laborers to wet his fields, and in the middle of the day the river from which the water was to be taken ceased to flow, if this was an accident the laborers have to suffer. If, however, this happens with the river frequently, the employer must suffer; provided the laborers were strangers and did not know the nature of this river. He also said: If the work for which the laborers were hired for a day was finished at the middle of the day, he may engage them with other similar or easier work, but not with harder. And if he has not such, he nevertheless must pay them the full amount. Why so? Let him pay them for the loss of time only? Rabha speaks of carriers of Mahuza (his city), who used to become weak when they had nothing to do (in the daytime).

The master said: The labor already done must be appraised, and if it was worth six dinars, they get a sala (eight dinars). Hence the rabbis hold that the laborers always have the preference.

"Or let them finish their work, and take two salas." Is this not self-evident? The case was that the labor became dearer, and the laborers and the employer became reconciled. Lest one claim that the laborers may say: "We accepted your reconciliation with the intention that you will raise our wages" (and as, according to the rabbis, the laborers always have the preference, their claim should be taken into consideration), he comes to teach us that the employer may say: "My intention in becoming reconciled was to give you a good meal."

"If the labor were worth one sala, they get it." Is this not self-evident? The case was, that at the time he hired them the labor was cheaper. He, however, promised to raise one zuz. Thereafter the labor became a zuz higher: lest one say that the laborers may claim that they were promised a zuz over the existing price, consequently they have to get two zuz more, he comes to teach us that the employer may say: "I was aware that the labor is worth a sala, and it will be increased to this extent sometime. I therefore promised to pay you the proper price, but not to add a zuz above the proper price."\*

"R. Dossa said," etc. As he holds, the employer has the preference. But to what purpose does he add: "Or let them finish the work and take two salas"? Is this not self-evident?

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\* Rashi explains this passage in another manner, which is somewhat complicated. Our translation seems to us to be the right one.

He treats of a case where the labor became cheaper and the employer locked them out, and afterwards the laborers became reconciled to him : lest one say that the employer may claim that he accepted the reconciliation with the intention to lower the price, he comes to teach us that the laborers may say they have become reconciled to him with the intention of making a good job. But to what purpose does he continue, that if a sala, etc.? Is this not self-evident? Said R. Huna b. R. Nathan : He speaks of a case where the laborers have lowered the price a zuz, and thereafter the labor became a zuz cheaper : lest one say that the employer may claim : "My agreement was to give a zuz less than the current price, consequently I have now to pay two zuz less," he comes to teach us that the laborers may claim : "We were aware that the labor may become cheaper, and were willing to work for the proper price, but not lower than that."

Said Rabh : The Halakha prevails in accordance with R. Dossa. Did, indeed, Rabh say so? Has he not said that a day laborer may retract even in the middle of the day? And lest one say that R. Dossa makes a difference between a day laborer and a piece-worker, the following Boraitha shows that he makes no difference, namely : "If one hired a laborer, and in the middle of the day the latter heard that one of his relatives died, or he became ill from sunstroke, whether he was a day laborer or a piece-worker he gets the full payment." Now, according to whom is it? Shall we assume it is according to the rabbis? Why, then, need it to be said that it was accident? Even without this the rabbis hold that the laborer always has the preference. It must therefore be in accordance with R. Dossa ; hence he makes no difference between the above two kinds of laborers?

Said R. Nahaman b. Itzhak : The Boraitha treats of a case where the work would be lost if not finished in the same day, and therefore only in case of an accident does he get the full payment in accordance with all of them ; but in other cases there is a difference between the two kinds of laborers mentioned above (according to R. Dossa). And if you wish, it may be said that the statement of our Mishna, that "he who retracts his word must suffer the damage," is to be interpreted as we have learned in the following Boraitha : "Whoever retracts." How so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, if the seller retracts, the buyer has the preference ; he may insist upon the return of his money, or he shall furnish him with the best estate for the value of his deposited money. If,

however, the buyer retracts, the seller has the preference; he may return him the money, or give him the worst estate he has for the value of his money. R. Simeon b. Gamaliel, however, says (that in case one buys an estate by instalment), an agreement must be written to prevent any retraction. How so? The seller writes: "I, so-and-so, sold such-and-such a field to so-and-so for one thousand zuz, of which two hundred were paid, and the balance of eight hundred is to be paid afterwards," then the agreement is in full force even for many years.

The master said: "Or best estates for his money." At the first sight it is to be understood the best estate the seller possesses. Why so? Let him be considered a creditor, of whom a Mishna states that he has to collect from the middle one; and, secondly, he has given the money for a certain estate which is still in existence? Said R. Nahaman b. Itzhak: The Boraitha means to say, in both cases, from the best and the worst of the field in question. R. Aha Aiga, however, says: There is no contradiction even when it means from the best estate he possesses, as usually a poor man who buys an estate for a thousand zuz has to sell out his personal property or small estates for a cheap price, so that if the seller retracts the buyer suffers damage, and there is a Mishna that all damages must be appraised from the best estate.

R. Simeon b. Gamaliel said: "The seller writes," etc. We see, then, that the buyer acquired title only because of the agreement, and not otherwise; but did not a Boraitha state: "If one gave a deposit to his neighbor, and said: Should I retract, my deposit shall be relinquished to you, and the seller said: Should I retract, I shall return you the deposit in double, the stipulations are of avail; so is the decree of R. Jose." [R. Jose is in accordance with his theory that an *asmakhta* gives title.] R. Jehuda, however, said: It is sufficient that the buyer should acquire title to the amount of his deposit. Said R. Simeon b. Gamaliel: All this is only in case the buyer said: My deposit shall give me title. If, however, there was sold to him a field for a thousand zuz, and in payment thereon he gives him five hundred zuz, title is given to the buyer to the whole field, and he has to give him the remainder even during many years (hence we see that according to him title is acquired even if it was not so written as stated above). This presents no difficulty. The Boraitha speaks of when the seller agrees to wait for the remainder, and the Mishna speaks of when the seller was in need of money, and insisted upon immediate payment (which shows that he sold him the article only because he

was in need of money, and would not like to give him title until the whole amount was paid ; as Rabha said elsewhere : If one has sold an article, when he was in need of money, and received a deposit from the buyer, title is not acquired unless the whole amount is paid ; but when the seller was not in need of money, and did not insist upon immediate payment of the remainder, title is acquired).

Rabha said again : " If one lends a hundred zuz to his neighbor, and he returns the sum in instalments by single zuzes, although it was not so stipulated, the payment is valid, and the lender has nothing but resentment, as he may say that the borrower had harmed him, for he could have done business with the money if it were paid to him in one payment.

There was a man who sold an ass while he was in need of money, and the buyer paid him the whole amount less one zuz. R. Ashi was deliberating if in such a case title is acquired or not. Said R. Mordechai to him : So said Abimi of Hagraunia in the name of Rabha, that one zuz is considered the same as many, and title is not acquired. Said R. A'ha b. R. Joseph to R. Ashi : But we have heard in the name of Rabha that title is acquired ; and he answered : The Halakha you have heard in the name of Rabha must be interpreted, in case it was certain that he has sold his field on account of its infertility, and the insisting upon the payment of the remainder was only because he was afraid he shall retract.

It is certain that if one was in need of a hundred zuz, and could not find any one to buy an estate for this amount, and sold out for two hundred (and received a deposit of one hundred zuz), and insisted upon the immediate payment of the remainder, then title is not acquired. But how is it when, if the same would trouble himself to find a buyer for one hundred zuz, he could get one, but he did not, and sold out for two hundred zuz, and was insisting upon the immediate payment of the remainder ? Shall we assume that this case should be considered as the case of selling a field on account of infertility, stated above ; or is it not because, after all, he sold out this field unwillingly, owing to the need of money ? This question remained undecided.

*If one hired a driver . . . or he may deceive them.* But to what amount may he hire others on their account ? Said R. Na'hman : To that amount which the employer owes them for the labor done already. Rabha objected to this statement from

the Boraitha stated above (p. 190), that he may hire on their account to the sum of from forty to fifty zuz ; and R. Na'hman answered : The above Boraitha speaks of a case where the laborers place their instruments to such an amount in the house of the employer.

**MISHNA II.** : If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal in both ways (as, *e.g.*, ten miles), and the ass dies, the hirer is responsible. If he hired it to use it on the mountain, and he used it in a valley instead, and the ass slipped, he is free (because this could surely occur on the mountain, upon which such a case is more frequent) ; if, however, it was overheated, he is responsible. The reverse is the case when he used it on the mountain instead of in the valley : if it slipped, he is responsible ; and if it is overheated, he is free. If, however, it was overheated because of the ascending to the top of the mountain, he is responsible. If one hired an ass and it became blind, or it was taken for an *angaria* (*i.e.*, taken by the Government for labor), the owner may say : " Yours (which you have hired) is before you." If, however, it dies, or broke a foot, he must furnish him with another ass.

**GEMARA** : Why does the Mishna make a difference in the second part between slipping and overheating, and does not do so in the first part ? In the school of R. Yanai was said : Because in the first part the plaintiff may claim the animal dies owing to the air of the mountain ; (if it was hired for a valley,) he may say that it was not used to the air of a mountain, and if for a mountain, he may claim it was not used to the air of a valley. R. Jose b. Hanina, however, said : The Mishna treats of when it dies owing to overwork, and Rabba says : The Mishna treats of when it dies from the bite of a snake (so the plaintiff may claim : If you had used it for the place hired, such would not have occurred). R. Hyya b. Abba, in the name of R. Johanan, said : The Mishna is in accordance with R. Meier, who holds that one who has done contrary to the agreement with the owner is considered a robber, and is responsible. Where is to be found such a statement by R. Meier ? In the following Boraitha : " If one has given a dinar to a poor man for the purpose of buying himself a shirt, he must not buy a garment, and if for the purpose of a garment, he must not buy a shirt, because this would be contrary to the intention of the donor."

But perhaps there is another reason ; namely, people shall not say: " So-and-so has promised to furnish a garment for the poor so-and-so," and did not keep his promise ? Then R. Meier should state : Because of suspicion. Why, then, his reason, " because it is contrary to the intention," etc. ? Hence he holds that every change of the intention of the owner is considered robbery. Infer from this that so it is.

*Or it was taken, etc.* Said Rabh : The case is only when it is an angaria which is to be afterwards returned ; but if it is an angaria which is not to be returned, he must furnish him with another ass. Samuel, however, maintains : There is no difference what kind of an angaria it was ; if it was taken for using to the same place where the hirer intends to go, the owner may say to him : " Yours is before you." If, however, it was taken in a contrary direction, then the owner must furnish him with another ass. An objection was raised from the following : If one hired an ass, and it became blind or mad, the owner may say : " Yours which you have hired is before you." If, however, it dies, or it was subject to an angaria, he must furnish him with another ass. This would be correct in accordance with Rabh's theory, as the Boraitha may treat of an angaria which is not to be returned ; but Samuel's statement it contradicts. And lest one say that the Boraitha speaks of when it was taken away in a contrary direction, so that it could agree with Samuel's statement also, it cannot hold good, because of the latter part of the same Boraitha, which states : R. Simeon b. Elazar said that if it was taken away for use in the same direction, the owner may say : " Yours is before you " ; and if in a contrary direction, he must furnish him with another ass. Now, from the statement of the latter it is to be inferred that it makes no difference to the first Tana in what direction it was taken ? Samuel may say : Is there not a Tana who is in accordance with my theory ? I hold with R. Simeon b. Elazar, and if you wish, it may be said that the whole Boraitha is in accordance with R. Simeon b. Elazar, but it is not complete, and should read thus : If one hires an ass, which becomes blind or mad, the owner may say : " Yours which you hired is before you." If, however, it dies or becomes subject to an angaria, he must furnish him with another ass. This, however, was said if it was taken away in another direction ; but if it was taken away in the same direction he intended to go, the owner may say : " Yours is before you " (you may accompany this one until the officers of the

Government will meet another ass, and yours will be returned to you). So is the decree of R. Simeon b. Elazar, as he used to say that only if it was taken in another direction must he furnish him with another ass, and not otherwise. But how can you interpret the Boraitha in accordance with him? Have we not heard him stating that if one has hired an ass for the purpose of riding upon it, and it becomes blind or mad, the owner must furnish him with another one, which contradicts the statement of the Boraitha in question? Said Rabba b. R. Huna: For the purpose of riding, it is different (as he cannot ride upon a blind or mad animal, but as for carrying burdens, he can do so even with the same). Said R. Papa: If he had hired the ass for the purpose of carrying glassware, the case is the same as if he hired it for riding.

Rabba b. Huna, in the name of Rabh, said: "If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, he has to pay the half of the agreed price, and he has nothing but resentment." Let us see. How was the case? If the carcass of this ass would pay for delivering the burden to the place to which it was hired, what had resentment to do here? Let him sell the carcass, and deliver the goods, and if this is not the case, why should not the owner deliver the goods to the place? The case was such that one could not be found, to be hired for delivery; and the owner may claim payment from the place from which it was taken, to the place directed. But let us see. How was the agreement? If it was for any ass to carry the goods, then certainly he must furnish him with another one, and if for this ass, then let him sell the carcass for the purpose of carrying his goods. This was when the sale of the carcass would not yield the amount needed. But even if the carcass would pay, may he do so? (Did, then, the owner *sell* him this ass? The decision of the Mishna is that he shall furnish him with another ass; consequently he has not given him any title for this one?) Rabh is in accordance with his theory who said elsewhere that the principal amount must not be totally consumed, as it was taught: "If one has hired an ass, and it dies while in the middle of the way," Rabh said, that if the carcass would pay to buy another one instead, he may do so; but if it would pay only to hire another one, he must not. Samuel, however, maintains he may, and the point of their differing is the total consumption of the principal amount of the thing hired. According to Rabh, it must not be consumed

(and the statement of the Mishna, that he must furnish him with another ass, is in case it dies while yet under the control of the owner, so that if he sells the carcass he adds to this amount and buys another ass, and so the principal amount is not wholly consumed as in case of selling the carcass for the purpose of hiring another one); and according to Samuel, even the total consuming of the principal amount is allowed.

The rabbis taught: "If one hires a boat, and it sinks in the middle of the way, R. Nathan said: If he has paid, the money remains with the same owner; but if he has not paid, he has nothing to pay." Let us see. How is the case? If the agreement was "for this boat in which I shall carry wine to a certain place," why, then, should he not collect what he paid for? He should claim for another boat for delivering wine, and if it was for any boat, for delivering *this* wine, why should he not pay, even if he has not done so until now? Let the owner claim for the wine he has agreed to deliver, and he will furnish another boat; and if the wine is lost, and the hirer cannot keep his agreement, let him pay. Said R. Papa: R. Nathan's decision can be explained only in case the agreement was "for this boat and this wine," but if the agreement was "for *any* boat and *any* wine," the loss must be divided.

The rabbis taught: "If one hires a boat for a certain place, and has unloaded it while in the middle of the way, he has to pay for the half way, and the owner has nothing but resentment." How is the case? If the owner has the opportunity to let it, why then resentment? And if not, why should he not get pay for the whole way? The case was, the owner had an opportunity to let it. He claims, however, that the loading and unloading, which must be done twice, damages the boat. But if so, the claim is a just one, and he has to be paid. Read in the Boraitha thus: In the middle of the way he loads more, and the agreement was that he may load as much as he likes, and shall be paid according to the weight of the load; and if he adds more in the middle of the way, he has to pay him for this loading for the half way only. But, then, what is the resentment for? For the losing of time.

The rabbis taught: "If one hires an ass for the purpose of riding, the hirer may place on it his garment, his bottles with beverages, and food for himself for that day. More than this, however, the driver may prevent. The driver may also place hay and barley and food for himself for this day only.

More than this, the hirer may prevent." How is it? If on the way, food can be bought, why should not the driver prevent the hirer from placing more food than for one day? And if it could not be bought, why should the driver be prevented from taking food for more than one day? Said R. Papa: The case was, that food could be obtained at the inn only, and for a driver it is customary to trouble himself, in the city, to find out who is selling food for the ass and himself, which is not the case with the hirer.

The rabbis taught: "If one hires an ass for the riding of a male, the same must not be used for a female; if for a female, a male may ride on it. There is, however, no difference whether the female was tall or short, pregnant or nursing." If you say that a woman nursing a child, which are two bodies, may, is it not self-evident that a pregnant woman, which is only one body, may? Said R. Papa: It means even when she was both pregnant and nursing.

MISHNA III.: If one hires a cow for the purpose of ploughing on the mountain, with all the implements belonging to it, and he plough in a valley, if the plough-handle breaks he is free; if *vice versa*, and it breaks, he is responsible. If to thresh pulse, and he threshes grain, he is free; but if to thresh grain, and he threshes pulse, he is responsible, because pulse becomes slippery (and thus the plough-handles can easily break).

GEMARA: But how is it if the plough-handle breaks without any change of the agreement: who has to pay for it? Said R. Papa: He who holds the handle of the plough (because it breaks owing to his carelessness); and R. Shesha b. R. Idi says: He who manages the handle in such a manner that the plough digs deeper in the ground than it ought to, and so the Halakha prevails. In a place, however, which was known to them as strong ground, etc., both the holder of the plough-handle and the manager are responsible.

R. Johanan said: If one sells a cow to his neighbor, saying: "This cow is a gorer, a biter, a kicker, lying down while laboring," and in reality it was afflicted with only one of these defects, the sale is invalid (as the buyer, on examining it, may not find one or two of the defects he was told of, and thinks the seller is only jesting, and the cow has no defects at all). If, however, he says: It is afflicted with one of the defects mentioned above, and it has also some other defects, although it was afflicted with only this one, the sale is valid (because it was the buyer's duty

to search for such defects as were mentioned to him). So, also, we have learned in the following Boraitha: "If one sells a female slave, telling the buyer that she is an idiot, epileptic, and becomes confounded, and she was afflicted with only one of these, the sale is invalid (for the reason stated above). If, however, he says she is afflicted with one of the defects mentioned above, and she has also other defects, the sale is valid." R. A'ha b. Rabha questioned R. Ashi: How is it, if she has indeed all those defects (and the buyer claims that because the seller mentioned all the defects separately, he thought he was jesting, but if he had been aware that she was afflicted, he would not have bought her)? Said R. Mordechai to R. Ashi: So was it said in the name of Rabha, that in such a case the sale is valid.

**MISHNA IV.:** If one hired an ass for carrying wheat, and he used it for barley (of the same weight as the wheat he had spoken of, and the ass becomes injured), he is responsible. For grain, and he used it for straw, he is responsible, because an increase of volume makes the load harder for the animal. If for half a kur of wheat, and he used it for half a kur of barley, there is no responsibility. If, however, he has increased the size (although it was equal in weight to the half kur of wheat), he is responsible. How much must the load be increased to make him responsible? Symmachos, in the name of R. Meier, said: One saah for a camel, and three kabs for an ass.

**GEMARA:** It was taught: Abayi said: We read in the Mishna: "The volume of the load is *like* the weight (*i.e.*, loads of the same volume are considered of the same weight as regards the stress on the animal, and if he added these kab to the volume bargained for, he is responsible for any injury to the ass). Rabha, however, said: We read in the Mishna: It is as hard *for* loading—*i.e.*, weight is weight, and the volume is an addition, and if he changed the load for a more voluminous one, although of the same weight, he is responsible for the additional volume.

There is an objection from our Mishna if it were hired to carry half a kur of wheat, and he used it for half a kur of barley: "If he has increased the size, etc., is it not meant three kabs" (as the explanation of Abayi)? Nay; it means a saah (and the Mishna is interpreted thus: If for carrying a half kur of wheat, and he used it for a half kur of barley, he is free, although he changed the article, as the change was lighter; if, however, he had increased the barley to the weight of wheat, he is respon-

sible, owing to the increase of size). But does not the Mishna state further on: "How much must the load be increased . . . a saah for a camel," etc.? This is not a continuation of the former, but a separate statement; thus, when there was no change in the article, and weight was added to the usual load, how much should be added in order to make him responsible? Symmachos says, etc.: Come and hear (another objection): "If it were for carrying a half kur of wheat, and he used it for sixteen saahs of barley, he is responsible." From which is to be inferred that if he added only three kabs he is free? Abayi explained that this Boraitha speaks of a load counted by stricken measures; according to others, reduced in weight by being worm-eaten.\*

The rabbis taught: "An addition of one kab makes one responsible when he has hired one to carry a burden on his shoulders. A *lethakh* (a half kur) is an addition to a skiff, one kur for a larger boat, and three kurs are an addition for a ship (*i.e.*, if the above were added to the usual loading of the vessels named, the one who hires is responsible for damage)."

The master says: One kab for him who carries on his shoulders: but if he is a man with sense let him throw it off if it is too heavy? Said Abayi: For example, when he became sick soon after he was loaded with his burden. And Rabha said: Even if it has not occurred so, as the Mishna's statement is for the purpose of an additional payment also—*i.e.*, for this addition he has to pay him separately. R. Ashi maintains that the carrier need not throw it off, because he may have thought: "I am too weak now, but I will become stronger, and able to carry the usual weight for which I am hired," as he was not aware that the size of a kab was added. It was said above: "One kur for a larger boat," etc. Said R. Papa: Infer from this that the usual weight for a large boat is thirty kurs. To what purpose is it stated? For the purpose of business—*i.e.*, if one has hired a boat for carrying without any stipulation, thirty kurs is the usual load.

MISHNA V.: All specialists are considered bailees for hire. If, however, they have notified the owners that the work is ready and they may take it, and the payment should be made thereafter, they are considered from that time gratuitous bailees. If one

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\* This is the explanation of the Goanim, but Rashi does not agree, because it does not lessen the increase of size; he therefore interprets this in the first explanation; both, however, are too complicated, and it is difficult to understand the real meaning without a correct knowledge of the custom, weight, and measure used at that time.

says: "Guard for me this article, and I will guard yours," the depositary is considered a bailee for hire. If one says: "Guard for me this article," and the depositary answers: "Leave it with me," he is a gratuitous bailee. If one has lent money on a pledge, he is considered a bailee for hire. R. Jehudah, however, said that if he has lent him money on a pledge (without interest) he is considered a gratuitous bailee; if, however, he has lent fruit on the pledge, he is considered a bailee for hire. Aba Saul said: "One may let out a pledge of a poor man, and the money he takes for it he shall deduct from the debt of the pledger, because this is considered as if he would return a lost thing."

GEMARA: Shall we assume that our Mishna is not in accordance with R. Meier\* of the following Boraitha: If one hired a cow, how shall he pay in case it is lost? (The question is asked because the law of a gratuitous bailee, a bailee for hire, and a borrower is to be found in the Scripture. A hirer, however, is not mentioned; hence the question: To whom of the above named shall he be compared?) R. Meier says: To a gratuitous bailee (as he pays for the labor done by the animal, and takes no compensation for guarding it). R. Jehudah, however, says: To a bailee for hire. (As he hired the animal for his benefit, although he pays for the labor, he is considered a bailee for hire. Now, a specialist who takes the article for his own benefit is compared to a hirer, and R. Meier considers him a gratuitous bailee.) It can be said as Rabba b. Abuhu, who has changed the names in the above Boraitha and taught: R. Meier said, To a bailee for hire; and R. Jehudah said, To a gratuitous bailee.

*If, however, they have notified, etc.* There is a Mishna (in Chapter VIII. of this tract): "If the borrower told the lender to send through a messenger, and he did so, he is responsible for an accident; and the same is the case when he returns it in that way." Said R. Na'h'man b. Papa: We have learned the same in our Mishna; if they all said: "Take yours, and the money you may pay afterwards," it is considered a gratuitous bailment. Is it not to be assumed that the same is the case if he has notified the owner that the work is ready (without adding something to it)? Nay; "Take yours" is different.

Huna Mar b. Mrimar, in the presence of Rabina, raised a contradiction between the two Mishnayoth mentioned above,

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\* Elsewhere it is explained that all anonymous Mishnayoth are in accordance with R. Meier, and this Mishna being anonymous, hence the question.

and afterwards explained them as follows : In our Mishna it is stated: If they said, "Take yours," etc., they are considered from that time bailees for hire ; and the same is the case if they have notified the owners that the work is ready for them. Is it not a contradiction from the above-cited Mishna that if the borrower told him to send, etc., he is responsible ? (Hence we see that it is considered under the control of the borrower even when he returned it, and this contradicts the statement in our Mishna, which is, that as soon as the specialist has notified the owner of the article that it is ready for delivery it is considered under the control of the owner.) And he himself answered that Raphram b. Papa said, in the name of R. Hisda, that the cited Mishna treats of when the borrower has returned the loan through his messenger before the agreed time has elapsed (consequently it was under his control unquestionably); but if he did so after the elapse of the agreed time, he is free.

The schoolmen propounded a question: What is meant by the expression "free" ? Is it meant free of the responsibility of a borrower (who is responsible for an accident also), but that he is still responsible as a bailee for hire (who must pay for theft and loss), or does it mean entirely free from any charge ? Said Amimar: It seems that he is free only from the responsibility of a borrower, but not from the responsibility of a bailee for hire ; as he has derived benefit from it, he is considered such.

There is a Boraitha supporting Amimar as follows: "If one bought utensils from a specialist to send to the house of his father-in-law, with the understanding that if they are accepted he will pay their value, if not, he will pay according to the benefit he shall derive from the pleasure they will give to the house of his father-in-law because of their being sent as presents: if an accident happens to the utensils while on the road thither, the buyer is responsible. If, however, the accident occurred while the utensils are being returned, he is free, for he is considered a bailee for hire (for he derives them from the benefit mentioned above), who is not responsible for an accident (and this is in accordance with the theory of Amimar).

There was a man who sold wine to his neighbor, and the buyer said : "I shall carry it to such a place : if I sell it there, you will be paid ; if not, it will be returned to you" ; and an accident occurred while returning it. When the case came before R. Na'hman, he made him responsible. Rabha objected from the above-cited Boraitha, which states that if an

accident occurred while on the road thither, he is responsible, and while returning, he is free ; and R. Na'hman answered : " This returning is to be considered as if it were on the road still for sale, because common sense says that if he could sell it while returning he would certainly do so."

*Guard for me, etc.* Why so ? Is this not to be considered a guard in the presence of the owner (as at the same time the article guarded was stolen, the owner of it was caring for the article entrusted to him in return, and the Scripture plainly reads [Ex. xxii. 14]: " But if the owner thereof be with it," etc. ; and this is explained further on to mean, if the owner is with him in the same labor) ? Said R. Papa : The Mishna means to say : " You guard for me to-day, and I will do so for you to-morrow."

The rabbis taught: If one say: " Guard for me this article, and I will guard yours to-morrow ; or, lend me, and I will lend you " ; " guard for me, and I will lend you," or *vice versa*, all are considered bailees for hire, one to the other.

There were sellers of spices who agreed that each one of them should be engaged one day in each week in preparing food for the whole company. One day they said to one of their number : " Go and bake bread for us," and he replied : " Then guard for me my garment." They, however, neglected to do so, and the garment was stolen ; and when the case came before R. Papa, he made them responsible. Said the rabbis to R. Papa : Why should they be responsible ? Was not the neglect in the presence of the owner ? And he was embarrassed. Finally it was learned that at the time the garment was stolen its owner was not occupied in baking, but was drinking beer (consequently the decision of R. Papa was a just one). But why was R. Papa embarrassed ? There is a different opinion between the Tana'im in such a case. According to one, he is free ; and according to the other, he is not. Could not R. Papa say that he agreed with the latter ? The case was, the day on which he was told to bake for the company was not the day appointed for him, and he was asked to do this as a favor. He, however, says : " For this favor you will favor me by guarding my garment," and it was not owing to wilful neglect that it was stolen. And R. Papa made them responsible according to the law of a bailee for hire ; and the rabbis told him that the company ought not to be held responsible, because of the law concerning a guard in the presence of the owner, to which *all* agree that there

is no responsibility, and therefore he was embarrassed ; but finally it was learned that his decision was correct as stated above.

There were two men on the road ; one was tall and the other was short. The tall man was riding an ass, and had with him an ironed sheet for a covering, and the short one was covered with a cloak (a woollen one). When they came to cross a stream, the short man placed his cloak upon the ass, and instead of it took the sheet of the tall man and wrapped himself up in it, and the water carried it away. When the case came before Rabha he made him responsible. Said the rabbis to Rabha : Why should he be responsible ? Was it not in the presence of his owner (*i.e.*, at the same time the sheet was lost, the lender was crossing the stream with the borrower's cloak ; is this not equal to the case, "guard my article, and I will do so with yours," of which it is said above that if it was at the same time there is no responsibility) ? And Rabha was embarrassed. Finally, it was learned that the short man took it without the consent of his comrade, and he also placed his cloak upon the ass without consent.

There was a man who let his ass to his neighbor, and told him : "See that you do not take the way by the river of Paqud, owing to its marshy road ; take the way of the city of Narsh, which is dry." The man, however, took the way by the river of Paqud, and the ass died ; when he returned he said : "It is true I took the way by the river mentioned, but there was no marsh." And when the case came before Rabba he said : This man may be trusted, as, if he were to tell a lie, he would say, "I took the way of Narsh." Said Abayi to him : Such a supposition cannot hold good when there are witnesses (*i.e.*, it is known to all that the way by the mentioned river is marshy).

*Guard this, etc.* Said R. Huna : If the depositary said : "Leave it here for you," he is not a gratuitous bailee and not a bailee for hire (*i.e.*, he has no responsibility whatever, as it can be understood to mean : "You, yourself can guard it in this place"). The schoolmen propounded a question : If he said : "Leave it anonymously," how is the law ? Come and hear : "Guard it for me," and he answered, "Leave it here for me," he is considered a gratuitous bailee ; from which is to be inferred that, if an anonym, he is not considered a bailee at all. On the other hand, from the above decision of R. Huna, that

the one who said "Leave it for you" is not considered as any bailee, it is to be inferred that if he said "Leave it" only, he is considered a gratuitous bailee. Therefore, nothing is to be inferred from the cited Boraitha. But shall we assume that on this point the Tanaim of the following Mishna differ? If he has brought him his things with the permission of the owner of this court, the owner is responsible. Rabbi, however, maintains that in all mentioned cases the owner is not responsible unless he accepted it for the purpose of guarding. Nay, perhaps the reason for the decision of the rabbis is because a court is usually a place where things are safe, and when the owner gave the permission to bring in the things, he did so with the intention of guarding them; but in our case, which concerns a public place, the expression "Leave it" may be understood to mean, "Leave it and guard it yourself." On the other hand, the reason for the rabbis' decision may be because usually one must have permission to enter a court belonging to a private person, and when he asked leave to place his things in the court, he answered, "Enter"—i.e., "enter and guard your things yourself"; but in a public place the expression "Leave it" may be understood to mean, "Leave it and I will take care of it," as, otherwise, does the man have to ask permission from him to leave it there?

*On a pledge, he is a bailee for hire, etc.* Our Mishna is not in accordance with R. Eliezer of the following Boraitha: "If one lends money on a pledge, and the pledge was lost, he may take an oath that there was no wilful neglect in guarding it, and collect his money from the borrower; so is the decree of R. Eliezer." R. Aqiba, however, maintains the defendant may claim, "You have lent me the money only on this pledge, and as the pledge is lost, so is your money." But if he lends a thousand zuz on a note, and also added a pledge, then all agree that he loses his money in case the pledge is lost (as then the pledge is not for any other purpose than to collect the money *from it* in case of default; otherwise the note would be sufficient even from an encumbered estate. Hence we see that R. Eliezer considers the possessor of the pledge a gratuitous bailee, contrary to our Mishna).

Shall we assume that the above-mentioned Tanaim speak of a case in which the pledge was not worth the amount lent upon it, and their point of differing is in a case which is similar to Samuel's following theory: "If one lends to his neighbor a

thousand zuz, and pledges for them the handle of a scythe only, if the handle is lost, the thousand zuz are lost (as he accepted it as a pledge for his money, he intends to collect his money only from it)? Nay, when the pledge was not worth the amount lent, none of them agrees with Samuel, as they speak of a pledge worth the amount lent, and the point of their differing is R. Itzhak's following decision: Whence do we deduce that a creditor acquires title to the pledge? From [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God." Now, if the lender does not acquire title to the pledge, what righteousness is there? But how can you understand it in this way? Was, then, R. Itzhak's decision in a case where the article was pledged at the time the money was lent? The above verse cited by him treats of a pledge taken by the court (as explained elsewhere). Have you ever heard that he said the same when it was pledged at the receipt of the money? Therefore, we must say, that all agree with R. Itzhak, and they speak of a case where it was pledged at the time of receiving the money, and the point of their differing is in regard to a guardian of a lost thing [*supra*, p. 00], of which R. Joseph's decision was that he is a bailee for hire.

But is it to be assumed that as to the above decision of R. Joseph the Tanaim differ? Nay; all agree with his decision. Here, however, they differ in case the lender uses this pledge for the purpose of deducting from the debt. According to one, a meritorious deed was done by him by lending the money (for which he will be rewarded), and he is therefore considered a bailee for hire; and according to the other, the using of the pledge is for his own sake, and there is no meritorious deed, and therefore he is considered a gratuitous bailee.

*Aba Saul said, etc.* Said R. Hannan b. Ami in the name of Samuel: The Halakha prevails in accordance with Aba Saul; and he also decided so only for a hoe; a stone-cutter's chisel and a hatchet, which are frequently used, pay, the wearing off of them being very little.

MISHNA VII.: If one carries a barrel from one place to another, and breaks it, whether he was a gratuitous bailee or for hire, he must swear (that there was no neglect), and is free. Said R. Eliezar: I have also heard that in both cases he has to take an oath, but was wondering how such a decision could hold good.

GEMARA: The rabbis taught: If one carries a barrel from

one place to another for his neighbor and breaks it, whether he was a gratuitous bailee or for hire, he must swear ; so is the decree of R. Meier. R. Jehudah, however, says : If he was a hired man, he must pay.

*R. Eliezar said, etc.* Shall we assume that R. Meier holds that stumbling is not considered wilful neglect ? Have we not learned (First Gate, p. 62) that if one has not removed his broken pitcher or his fallen camel from a public thoroughfare, and upon it some one is injured, R. Meier makes him responsible. And the sages, however, maintain that he is free in civil court, but responsible in heavenly court, and we are aware that the point of their differing is whether stumbling is considered a wilful neglect ? Said R. Hyya b. Aba in the name of R. Johanan : This oath is an enactment of the sages, as, if it would not be made, no one could find a man to carry a barrel for him.

What shall he swear ? Said Rabha : " I swear that I broke it unintentionally " ; and R. Jehudah comes to teach us that the oath is only for a gratuitous bailee, but that a bailee for hire must pay, each according to the law applicable to them (as in my opinion stumbling is not considered a wilful neglect, but between a neglect and an accident, therefore it must be compared with the law of stolen or lost, and there was no enactment of the sages at all) ; and R. Eliezar (of our Mishna) comes to teach that he has a tradition that R. Meier is right in his decision, but I do not understand how an oath could be given to both kind of bailees, as an oath is correct only concerning a gratuitous bailee, who has to swear that he has not neglected (as I also agree with R. Jehudah that stumbling is not considered neglect). But what should a bailee for hire swear ? That he has not neglected ? He must pay even then. And also concerning a gratuitous bailee, an oath would do if in the place where he had to pass was a declivity in the middle of the alley ; but if not, how can he swear that he has not neglected, when he was stumbling on an even way ? (and this, as said above, " is considered between neglect and accident " ). And finally, in case of a declivity also, an oath should be given only when there are no witnesses that such was in the way ; but if there are witnesses, why an oath ? Have we not learned in the following Boraitha : Aissi b. Jehudah said : The Scripture reads [Ex. xxii. 10, 11] : " No man seeing it, then shall an oath of the Lord be between them both. " But if there was a man who had seen it, then he must testify, and the defendant is acquitted.

There was a man who carried a barrel of wine on the main street of the city of Mahuza, and broke it on a beam projecting from a wall. When he came before Rabha he said : In the main street many people are passing ; go and bring witness that there was no neglect on your part and you will be acquitted. Said R. Joseph, his son, to him : Is your decision in accordance with Aissi (mentioned above) ? And he answered : Yea ; as I hold with him.

There was a man who sent a messenger to buy for him four hundred barrels of wine, and he did so, but thereafter he informed the sender that the contents of all of them became sour. When the case came before Rabha, he said : If such a considerable quantity of wine became sour, people would talk about it, and become aware of where the barrels were placed, and what was the reason the wine became sour. You are therefore responsible, unless you bring witnesses to show that at the time you bought it the wine was good, and was spoiled by an accident. Said R. Joseph, his son, to him : Is your decision in accordance with Aissi ? And he answered : Yea ; as so the Halakha prevails.

R. Hyya b. Joseph enacted in the city of Sikhra that the carrier who carries his burden by means of carrying poles, if he carries barrels of wine, and they break, he has to pay half damages only. Why so ? Because with a burden which is too heavy for one and too light for two, it is to be considered between neglect and accident. They, however, who carry by means of trimmer beams must pay the whole (because taking such a heavy burden, which needed the strength of two, is considered a wilful neglect).

There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and he took their garments for the damage caused ; and they came to complain before Rabh, who commanded Rabba b. b. Hana to return their garments. And when the latter questioned him : Does the law prescribe so ? He answered : Yea ; as it is written [Prov. ii. 20] : " In order that thou mayest walk in the way of good men." Rabba b. b. Hana did so. The carriers, however, complained again : " We are poor, we were working the whole day, we are hungry and have nothing to eat." And Rabh told Rabba he must pay them for their labor. And he asked again : Is so the law ? And he answered : Yea ; as it is written [*ibid.*, *ibid.*] : " And observe the path of the righteous."

## CHAPTER VII.

REGULATIONS CONCERNING THE TIME A LABORER HAS TO WORK,  
WHAT HE MAY OR MAY NOT CONSUME OF THE ARTICLE HE IS  
WORKING, AND ABOUT MUZZLING AN OX WHILE LABORING.

**MISHNA I.:** One cannot compel his employees to come earlier or depart later than is customary at a place, although it was agreed upon. Where it is customary for the employees to get food, the employer must do so. In places where it is customary to furnish them with vegetables, he must do so, and all according to the custom of that country (although it was not stipulated in the agreement).

It happened with R. Johanan b. Mathia, who said to his son : Go and hire laborers for us. He did so, with the understanding that they should be fed ; and when he came to his father, he said to him : " My son, if you should provide them with meals like the banquets of King Solomon at his time, you are not sure that you have done your duty, as they are children of Abraham, Isaac, and Jacob. Therefore, go and tell them, before they begin their labor, that they are to be fed with bread and pulse only." Said Rabban Simeon b. Gamaliel : It was not necessary at all, as all must be done according to the custom of the country.

**GEMARA :** Is this not self-evident ? The Mishna means to say, that even when he has increased their wages he cannot say that he did so that they should begin earlier and depart later than customary, as the employees may claim that the increase of wages was for the purpose of making a good job.

Resh Lakish said : " It is advisable for a laborer that when he departs from his labor he should relinquish a little of his time for the employer (*i.e.*, that if the custom was to work from morning until dark, he shall not manage to come home at twilight, but to stay at his work until dark). In the morning, however, he has not to leave his home before sunrise (*i.e.*, that from the time of leaving home to his place of labor he should be considered as laboring)."

But to what purpose was this statement ? Let them observe the custom of that city ? He alludes to a new city. But even then let him observe the custom where they come from ? He means when the laborers were hired from different cities with different customs. And if you wish, he speaks in case the agreement between the employers and employees was that they shall do their work as a laborer mentioned in the Scripture [Psalm civ. 22, 23] : "The sun ariseth. . . . Man goeth forth unto his work and to his labor until the evening."

R. Zera lectured ; according to others, R. Joseph taught : It is written [*ibid.*, *ibid.* 20] : "Thou causest darkness, and it becometh night, wherein creep forth all the beasts of the forest." This world is compared to the darkness of night. All the beasts, etc., means the "wicked," who are compared to wild beasts. "The sun ariseth in the world to come," means to the upright. "They withdraw to their lairs," means the wicked to Gehenna. "And lie down in their den," means the upright, as each upright one has a dwelling in the world to come, according to his honor. "Man goeth forth unto his work," means the upright are going to receive their reward. "And to his labor until the evening," means he who has completed his work, while alive, until the day of death.

R. Eliezar b. R. Simeon met the chief of police who was engaged in capturing thieves, and said to him : How can you capture them ? Are they not compared to wild beasts (according to others, he quoted to him the following verse [*ibid.* x. 9] : "He lieth in wait in a secret place like a lion in his den," etc), and perhaps you capture respectable men, and the wicked remain at large ? And he answered : What can I do ? I am so ordered by the king. Then he rejoined : I will instruct you how to do. Enter a wine-house at the fourth hour of the day (first meal-time), and if you will see a man drinking wine, holding his goblet and slumbering, make an investigation about him. If he is a scholar, he was certainly engaged in his studies at night ; if he is a laborer, it may be he was engaged in his labor at night ; and if he was a night laborer, and it was not heard that he was working at night, still it must be investigated—perhaps he has done such labor that causes no noise ; but if this man is nothing of this kind, he is surely a thief, being engaged the whole night in his miserable work, and you may capture him. This advice was heard in the ruler's house, and it was decided *that the reader of the letter himself should be the messenger.* (This

was the parable at that time, which means that the adviser himself should be engaged for the same purpose.) R. Eliezer was brought and appointed to capture the thieves, and so he did. Sent to him R. Jehoshua b. Kar'ha : " Vinegar descending of wine " (this parable was also applied to men of reputable origin who turn to bad habits), " how long will you deliver people of the Lord for slaying ? " And he answered : " I weed the thorns of the vineyard. " And the above R. Jehoshua sent to him again : " Leave it for the owner of the vineyard ; he himself will weed the thorns. " One day he was met by a washman, who called him " Vinegar descending of wine " ; and he thought, because the man was so brazen he must be wicked, and gave orders to capture him, which was done. When his wrath abated he tried to release him, but he could not, and he applied to himself the verse [Proverbs, xxi. 23] : " Whoso guardeth his mouth and his tongue, guardeth his soul against distresses. " Finally the prisoner was to be hanged, and R. Eliezer stood under the gallows and wept. Said the prisoner to him : " Rabbi, do not be sorry ; I and my son have committed adultery on the Day of Atonement. " The rabbi, placing his hand on his abdomen, said : Rejoice mine entrails ; if your doubts are so, how is your certainty. I am sure that no worms shall consume you after death. The same case happened with R. Ismael b. R. Jose, that he was ordered by the Government to capture thieves. Elijah met him and said : " How long will you deliver the people of the Lord for slaying ? " And he answered : " What can I do ? So is the order of the king ! " And Elijah rejoined : " Your father escaped to Assia ; you can do the same to Ludqia. "

[Both R. Ismael b. R. Jose and R. Eliezer b. R. Simeon were so big-bellied that when they were standing face to face a yoke of oxen could pass under them.] R. Johanan said : I am a remainder of the beauties of Jerusalem.

He who would like to see a beauty similar to that of R. Johanan shall take a silver goblet just out of the worker's hands, with the mark of the flame still to be seen on it, and shall fill it with the germs of scarlet " rumna, " put on its top a crown of red roses, and place it between the sun and the shadow ; and in the reflection from it one may see but a part of R. Johanan's beauty.

Is that so ? Did not the master say that the beauty of R. Kahana is similar to R. Abuhu ? The latter beauty is likened to that of Jacob the patriarch, and his is likened to the beauty

of Adam the first ; hence R. Johanan was not mentioned among the beauties ? Because he had no beard.

R. Johanan used to sit by the gate of the bath, so that when the daughters of Israel would return from taking their legal bath, they should meet him, and bear children like to him in beauty and scholarship. And when the rabbis questioned him : Are you not afraid of an "evil eye" ? he answered : I am a descendant of the children of Joseph, and no "evil eye" can do harm to them ; as it is written [Genesis, xlix. 22] : "Joseph is a fruitful bough, a fruitful bough by the eye."\* And R. Abuhu said : Do not read "by the eye," but "above the eye" (which means that no eye can do harm to him). R. Jose b. Hanina said : He infers this from the following verse [*ibid.* 48] : "And let them grow into a multitude" (like fish, etc.).† As the water covers the fish in the sea, so that the eye can do no harm to them, so is it with the descendants of Joseph.

One day R. Johanan was bathing himself in the Jordan. When Resh Lakish saw him, he jumped into the Jordan, and came to him. Said R. Johanan to him : Your strength shall be devoted to the study of the Torah. Rejoined Resh Lakish : Your beauty is fit for women. Said R. Johanan : If you will repent (and leave your profession), I will give you my sister, who is still more beautiful than I am. Resh Lakish accepted this proposition [and when he was about to jump for his garment, he could not do so (Rashi explains this by saying that because he accepted the yoke of the Torah he lost his strength)]. R. Johanan then instructed him and made a great man of him. One day there arose a dispute in college about the time at which different new iron weapons, as swords, knives, etc., became subject to defilement. R. Johanan said : From the time they were taken from the furnace ; and Resh Lakish said : From the time they are taken out of the cooling water. Said R. Johanan : The former robber understands his handicraft (knows the nature of deadly weapons). Rejoined Resh Lakish : And what good have you done me ? When in my old profession, I was also called master, as in my new profession. Rejoined R. Johanan : I have done much good to you, as I brought you under the

\* The term in the Scripture is עַי, which has two meanings, "eye" and "spring." Leeser translates it by "spring" ; the Talmud, however, takes it literally.

† The expression in the Scripture is דָּגִים. Dag in Hebrew means fish ; hence the analogy in text. Leeser, however, translates it according to the sense.

wings of the Shekhinah. R. Johanan was nevertheless dejected, and Resh Lakish became ill. The wife of Resh Lakish, who was the sister of R. Johanan, came to the latter and wept, saying: Pray for his health, for the sake of my son. And in response he cited the following verse: "Leave thine orphans to me, I will give them their livelihood" [Jerem. xlix. 11]. She continued weeping: Do pray, for my sake, that I am not left a widow. And he cited to her in answer the end of the same verse. Finally, R. Simeon b. Lakish's soul went to rest, and R. Johanan grieved very much after him. And the rabbis of the college were searching for a man who would be able to soothe him, and decided that R. Elazar b. Pdath, whose decisions are original, would be fit for this task. And he went to R. Johanan's college and sat before him, and when R. Johanan said anything, he used to say: There is a Boraitha which supports you. Then R. Johanan exclaimed: Is it you who desires to replace bar Lakish? In his time, when I said anything, he raised twenty-four objections, and I had to make them good with twenty-four answers, so that the discussion became very animated. You, however, say to everything: There is a Boraitha which supports you. Am I not aware that my saying has a good basis? Finally, R. Johanan tore his garments, wept, and cried: "Where art thou, bar Lakish? Where art thou, bar Lakish?" He continued crying until he became demented, and the rabbis prayed for his death, and his soul went to rest everlasting.

Notwithstanding that R. Simeon b. Eliezar said above that he is sure all his deeds were just, he was not satisfied, and prayed for mercy from Heaven, and invoked upon himself chastisements, and became so afflicted that in the night they had to spread under him sixty felt spreadings, and in the morning they removed from him sixty basinsfuls of blood. In the morning his wife used to make for him sixty kinds of pap, which he ate, and became well. His wife, however, would not allow him to go to the college, in order that he might not be troubled by the rabbis; and so he used to say every evening to his afflictions: "Come, my brothers," and in the morning, "Go away, for I do not want to be prevented from studying." One day his wife heard him call the afflictions, and she exclaimed: You yourself bring these afflictions upon you! You have exhausted the money of my father (through your illness). She left him and went to the house of her father. In the meantime it happened

that sailors made him a present \* of sixty slaves, each of them holding a purse with money ; and the slaves prepared for him daily the sixty kinds of pap he used to eat. One day his wife told her daughter : Go and see what your father is doing. And she went. Her father then said to her : Go and tell your mother that we are richer than her parents. And he applied to himself the verse [Prov. xxxi. 14] : " She is become like the merchant ships, from afar doth she bring her food." Finally he ate, drank, became well, and went to the college, and there he was questioned about sixty kinds of blood of women, and he purified all of them.† The rabbis murmured, saying : Is it possible that of such a number there should not be a doubtful one ? And he said : If it is as I have decided, all of them shall bring forth male children ; if not, then there shall be at least one female among them. Finally, all of the children were born males, and were named Eliezar after him. [There is a Boraitha, Rabbi said : " Woe to the wicked Government which has prevented R. Eliezar from attending the college, and, because of this, the multiplying of Israel." ] When he was about to die, he said to his wife : I know the rabbis are angry with me (for I have captured many of their relatives as thieves), and they will probably not attend my funeral as they ought to do. You shall therefore leave me in my attic, and you shall not be afraid of me. Said R. Samuel b. R. Na'hmani: I was informed by the mother of R. Jonathan that she was told by the wife of R. Eliezar that no less than eighteen and no more than twenty-two years after his death she kept him in his attic. She used to ascend every day to examine his hair, and found nothing, and when it happened that one hair fell out, blood was visible. One day she found a worm in his ear, and she was dejected. But he appeared to

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\* Rashi explains that while sailing they were in danger of being wrecked by violent storms, and they prayed to be saved because of the merits of Eliezar, and they were saved miraculously, and therefore they made him this present.

† There is a custom even now among the orthodox Jews, that when a blood-stain is found on the sheet of a married woman, it is carried to the rabbi to determine if it is that kind of blood for which the woman must be separated for two weeks, and after that time to take a legal bath ; or whether the stain is not that kind of blood for which she must be separated ; as there is a Mishna [in Tract Nida, Chap. II.] that five colors of blood are considered unclean (*i.e.*, for which she must be separated), and the other kinds are not considered blood, and she may have intercourse with her husband without taking the prescribed legal bath. Hence the sixty kinds of blood mentioned in this legend. The number " sixty " seems to be a favored number with them for exaggeration.

her in a dream, telling her : It is nothing to be dejected for, as this is a punishment for allowing a young scholar to be insulted in my hearing, and not protesting against it, as I ought to have done. When two parties had a law-suit, they used to come and stand by the door, and each of them would explain his cause. Thereafter a voice was heard from the attic: You, so-and-so, are just with your claim; or, You, so-and-so, are unjust. It happened one day that his wife was quarrelling with a neighbor, and the latter exclaimed: It may occur to you, as to your husband who is not buried. And when the rabbis heard this, they said: When this conduct goes to such a length, it is an insult to the deceased. According to others, R. Simeon b. R. Jo'hai, his father, appeared to one of the rabbis in a dream, and said: There is my little dove among you, and you do not care to bring it to me. And the rabbis decided to employ themselves with his funeral. However, the inhabitants of Akhbria would not let them remove R. Eliezar from his attic, because during all the years R. Eliezar slept in his attic not a wild beast had come to their city. On one eve of the Day of Atonement the inhabitants of the city mentioned were troubled, and took away the guard from R. Eliezar's house; and the rabbis hired some men of the village of Biri, and they took the corpse with the bed and brought it to the rabbis, who removed it to the cave of his fathers. They, however, found the cave surrounded by a snake, and said: Snake, snake, open thy mouth, and let the son enter to his father. And it did so. Rabbi then sent a message to the widow that he would like to marry her, and she answered: An object which was used by a holy man should not be used by an ordinary man. There is a parable: Should the hook which was used by the hero to hang up his weapon be also used by Kulba the shepherd to hang up his knapsack? Sent Rabbi to her: Let it be granted that he was greater than myself in wisdom. Was he also greater than I in meritorious acts? And she answered: You admit, then, that he was greater in wisdom than you, of which I was unaware. I am, however, aware that in meritorious acts he was greater than you, as he submitted to chastisements, which you did not.

Where is it known that R. Eliezar was greater in wisdom than Rabbi? When Rabban Simeon b. Gamaliel and R. Jehoshua b. Kar'ha were sitting in the college on benches, R. Eliezar and Rabbi were sitting before them on the floor, objecting and answering (discussing the Halakhas taught). And once the

sages said : We are drinking the water of the two young men, and we let them sit on the floor! They prepared benches for them, and they occupied them. Said R. Simeon b. Gamaliel to Rabbi: I possess only one little dove (only one son), and you want me to lose it (he was afraid of an "evil eye," as Rabbi was then too young). And they made him descend to his former seat on the floor. Then R. Jehoshua b. Kar'ha said : Is it right that he who has a father shall live, and he who has not shall die? (*i.e.*, because R. Eliezar was an orphan, we shall leave him on the bench without fear of an "evil eye," even though he was of the same age as Rabbi). They therefore made R. Eliezar also take his former seat on the floor. Eliezar became dejected, saying: They compare me to him. Until that time, when Rabbi said anything, R. Eliezar used to support him; from that time, however, when Rabbi used to say: I have to object, R. Eliezar would say to him: You mean to object from this and this; here is the answer to your objection, and also to an objection you intend to raise from this and this, and so you are surrounding us with lots of objections which are of no value. Rabbi became dejected, and came to complain before his father, who answered: You should not be angry, as he (Eliezar) is a lion, the son of a lion, and you are a lion, the son of a fox. And this is what Rabbi said elsewhere: There were three modest men, my father, the children of Bathyra, and Jonathan the son of Saul. My father, as said above, that he compared himself to a fox; the Beni Bathyra, as it is said (Passover, p. 127), that they who were princes themselves have left their places to Hillel, as he was greater in wisdom than they; and Jonathan b. Saul, as it is written [I. Samuel, xxiii. 17]: "And thou wilt be king over Israel, and I will be next unto thee." [But perhaps Jonathan said so because he had seen that the whole world was sympathizing with David; and also the Beni Bathyra, because they were compelled to do so, as they could not answer the questions submitted to them; therefore R. Simeon b. Gamaliel was certainly one of the modest men of the world.]

Said Rabbi : I see that chastisements are favored. And he accepted for himself afflictions for thirteen years, six of them with cold chills, and seven of them with scurvy.

The riding-master of Rabbi was wealthier than King Sabur. When he used to feed the animals of Rabbi, the voices of the animals were heard for three miles. And he used to do this at the time Rabbi was doing the necessary of men, and he was

crying so from pain that his voice was heard all over the neighborhood ; and notwithstanding the voice of the animals, his voice was heard farther, so that even the sailors on the sea heard him. (Says the Gemara :) Nevertheless, the afflictions of R. Eliezar b. R. Simeon were of more value than Rabbi's, as the former's were caused by love, and went away for the same reason ; and Rabbi's were caused by an act, and went away also in the same manner. Caused by an act, as follows : There was a calf which was about to be taken for slaughtering, and it ran away, and put its head under the garment of Rabbi, and cried. And Rabbi answered : Go ; you are created for this purpose. Then it was said by Heaven that, as he has no mercy with creatures, he shall be afflicted with chastisements. And the afflictions also disappeared because of the following act : One day his female servant was about to dispose of kittens, and Rabbi said to her : Leave them alone ; it is written [Psalm cxlv. 9] : " And his mercies are over all his works." Then it was said by Heaven : Because he has mercy with creatures he shall be dealt with mercifully and relieved from his chastisements.

During all the years R. Eliezar was suffering from his afflictions, men were not dying before mature age ; and during all the years Rabbi was suffering from his illness, it never happened that the country was in need of rain. It chanced that Rabbi came to the place where R. Eliezar used to dwell, and asked whether that upright man had left a son. And he was told that there was a son, and every prostitute whose price was two dinars paid *to him* four dinars. And Rabbi sent for him, surrendered him to R. Simeon b. Aissi b. Lqunia, the brother of his mother, and left for him a diploma as rabbi, against the time that he should be able to graduate. The first few days the youth used to say : I will return to my place. And his uncle tried to persuade him to give his attention to study, saying : People want to make you a scholar, and you will be rewarded with a golden candlestick, and named Rabbi, and you say you will return to your former place. He persuaded him so much that he swore never to mention it again. When he grew up he went to the college of Rabbi, and when the latter heard his voice he said : The voice of this young man is similar to the voice of R. Eliezar b. R. Simeon. And he was told that this youth was his son. Rabbi then applied to him [Prov. xi. 30] : " The fruit of the righteous is the tree of life, and the wise draweth souls to himself." " The fruit of the righteous means R. Jose b. R.

Eliezar, and the wise, etc., means R. Simeon, his uncle." When this R. Jose died, they brought him to the cave of his father, and found it encircled by a snake. The rabbis said : " Akhna, akhna (snake), open thy mouth, and let the son enter to his father. But it did not listen to them. They thought it was because his father was a greater man. A heavenly voice, however, was heard : Not because the father was greater than the son, but because the father was suffering with his father in the cave,\* which was not the case with R. Jose b. Eliezar.

It happened once that Rabbi came to the city where R. Tarphon used to dwell, and asked whether the same, who used to swear by his children (I shall bury my children if it is not so-and-so), left a son. And he was told that he left no son, but a grandson of his daughter, and he is such a beauty that the prostitutes paid him. He sent for him, and told him : If you will repent I shall give you my daughter. And he did so. According to some, he married Rabbi's daughter, and thereafter divorced her ; and according to others, he did not marry her at all. People should not say that he repented only for the sake of this woman. [But what was the reason that Rabbi troubled himself so much in such cases ? It was because it was said by R. Jehudah, in the name of Rabh ; according to others, R. Hyya b. Abba, in the name of R. Johanan ; and still according to others. R. Samuel b. Na'hmani, in the name of R. Jonathan : He who teaches the law to the son of his neighbor is rewarded by becoming a member of the heavenly college ; as it is written [Jeremiah, xv. 19] : " Behold, thus said the Lord : . . . Thou shalt stand before me, and if thou bring forth the precious from the vile, thou shalt be as my mouth." And he who teaches the law to the son of a commoner, even if there was an evil heavenly decree against the world, it is abolished for the sake of this meritorious act, as it is written in above-cited verse.

R. Parnakh, in the name of R. Johanan, said : He who is a scholar himself, and also his son and also his grandson, the Torah does not depart from his children for everlasting ; as it is written [Isaiah, lix. 21] : " And my words which I have put in thy mouth shall not depart out of thy mouth, nor out of the mouth of thy children, nor of the mouth of thy children's children, said the Lord, from henceforth and unto all eternity." The repetition, " said the Lord," in the same verse signifies that the Holy One,

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\* See Sabbath, p. 58.

blessed be He, says : " I am the surety that so it will continue." What is meant by eternity ? Said R. Jeremiah : In the later generations the Torah returns to its old inn.

R. Joseph fasted forty days, and he heard a heavenly voice : " It shall not depart out of thy mouth." He fasted another forty days, and heard : " It shall not depart out of thy mouth and out of thy children." He fasted then forty days more, and he heard : " Also out of the mouth of thy children's children." He then said : For the later generations I have no more to fast, as the Torah usually returns to its old inn.

R. Zera, when he ascended to Palestine, fasted one hundred days in order to forget the Gemara of the Babylonians, to the end that he should be no longer troubled by them. Then he fasted another hundred days, that R. Eliezar might not die during his life, as then he would have to bear all the troubles of the congregation. Then he fasted another hundred days more, that the fire of Gehenna might not affect him. Every thirty days he used to examine himself by a heated oven, and the fire did not affect him. It happened, however, one day, that the rabbis gave their eyes to this, and he burned his hips, and henceforth he was named " the little one with the burned hips."

R. Jehudah said in the name of Rabh : It is written [Jeremiah, ix. 11, 12] : " Who is the wise man that may understand this ? And who is he to whom the mouth of the Lord hath spoken, that he may declare it ; for what is the land destroyed ?" etc. The beginning of the verse was questioned by the wise, but without a result. The continuation of the verse was questioned by the prophets, and also without any result, until the Holy One, blessed be He, explained it himself in the succeeding verse : " And the Lord said : Because they forsook my law, which I had set before them."

Said R. Jehudah in the name of Rabh : " The words which I have set before them" (which are superfluous, as it is written above, " my law") signifies that even when they were occupied in the study of the law, they have not pronounced the prescribed benediction for it (and with this they have shown that the law is not respected by them as it ought to be).

R. Hama said : It is written [Prov. xiv. 33] : " In the heart of the man of understanding resteth wisdom," which means " a scholar a son of a scholar" ; " but (the little which is) in the bosom of fools is made known" means " a scholar the son of a commoner." Said Ula : This is what people say : A single issar

in a pitcher makes kish-kish. (A single coin in a pitcher proclaims its presence.) Said R. Jeremiah to R. Zera : What is the meaning of [Job, iii. 19] : " The small with the great is there, and the servant free from his master " ? Are we ignorant that the great and small are there ? It must therefore be interpreted thus : He who makes himself little for the purpose of studying the Law in this world, he becomes great in the world to come ; and also he who hires himself for a slave to the Law in this world, he becomes a lord in the world to come.

Resh Lakish used to mark the caves of the rabbis (to the end that priests might not step on them, as it is prohibited to them to defile themselves by graves). When he was about to do so with the cave of R. Hyya, it was concealed before him, and he became dejected and said : " Lord of the Universe ! Have I not occupied myself with the discussions of the Torah like R. Hyya ? " And a heavenly voice answered him : Yea, thou hast occupied thyself as much as R. Hyya, but thou hast not multiplied the Torah as much as he did.

When R. Hanina and R. Hyya were quarrelling, said the former to the latter : Are you quarrelling with me, who am able to renew the Torah, should it be forgotten, by means of my ingenious discussions ? And he answered him : Are you quarrelling with me, who have caused that the Torah should not be forgotten in Israel ? I did thus : I have sown flax, prepared nets of it, caught deer, made of their skins parchment, and with their meat I fed orphans. I wrote on the parchment the five books of the Pentateuch, each on a separate roll, and used to go to a city, taking five little boys, instructing each of them in one of the above books until they knew the contents by heart. I took also other six boys, and instructed each of them in a different section of the Mishnayoth, saying to the boys, " Until I return, each of you shall teach the others the book which is known to one of you and not to the other " ; and so I have caused the Torah not to be forgotten in Israel. And this is what Rabbi exclaimed : How great are the acts of Hyya ! Said R. Ismael b. R. Jose to him : Are they then greater than yours, master ? And he answered : Yea ! Greater also than my father's ? (Questioned R. Ismael again.) And he said : Nay ! No one could bear such in his mind.

R. Zera said : Yesterday night R. Jose b. Hanina appeared to me in a dream, and I questioned him : Where are you placed in

the heavenly college? And he answered: By the side of R. Johanan. And where is R. Johanan placed? By the side of R. Janai. And where is R. Janai placed? By the side of R. Hanina. And R. Hanina? By the side of R. Hyya. I then said: Is not R. Johanan worthy to be placed by the side of R. Hyya? And he answered: To a place which is illuminated and from which rays come forth, who will dare to bring into it the sun of Napha? R. Habiba said: I was told by R. Habiba b. Surmkhi, who has seen one of the rabbis to whom Elijah frequently appeared, that in the morning his eyes were nice and in the evening they were red, as if burnt by fire. And to the question, What is the matter? he told me: I have asked Elijah to show me the rabbis while ascending to the heavenly college. And he rejoined: At all of them you may look, but toward the palanquin of R. Hyya you must not look. And how shall I recognize it? All the rabbis are accompanied by angels when ascending and descending, except the palanquin of R. Hyya, which does so of itself. I, however, could not restrain myself, and gazed upon it. Then two rays blinded my eyes. On the morrow I went to the cave of R. Hyya, fell upon it, and prayed, saying: I am studying the Boraithas of you, O master! and I occupied myself with their explanations; then I was cured.

Elijah used to appear frequently in the college of Rabbi. On one of the days during new-moon, it was a bright day, and Elijah did not appear; and when he questioned him thereafter the reason why, he rejoined: It takes time until I awake Abraham, wash his hands, await until he prays, and bring him afterwards to sleep again. The same I do with Isaac, and the same with Jacob. Rabbi questioned him again: Why do you not awake all of them at the same time? "This I am not allowed, as it is to be feared then, if they should all pray together, they would bring the Messiah before his time." And Rabbi asked him: Is their equal to be found in this world? And he said: Yea! There are R. Hyya and his sons. Rabbi then ordered a fast-day, and placed R. Hyya and his sons on the altar, and when they came to the benediction, "He who causes the wind to blow," a wind came, and when they came to the words, "He who causes rain," rain came. When, thereafter, they were about to say the benediction of "resurrection," the world began to tremble, and in heaven it was questioned, "Who has revealed the secret to mortals?" And Elijah was found guilty,

and they punished him with sixty fiery lashes. He then appeared on the altar as a fiery bear, and scattered them.

Samuel of Ir'hina was the physician of Rabbi. When Rabbi had sore eyes, he was about to inject some medicine into them, and Rabbi said : I cannot endure it. He then wanted to apply salve to the eyes, but Rabbi prevented him, as even this he would not endure. He then poured some medicine into a tube under his head in bed, and he was cured. Rabbi troubled himself to invest Samuel with the title "Rabbi," but never had the opportunity, and Samuel said to him : Let the master not be so sorry. I have seen the book which was shown to Adam the first, and there it is written : "Samuel of Ir'hina will be named a sage, but not a rabbi, and Rabbi will be cured through him." It is also written there : "Rabbi and R. Nathan are the finishers of the Mishnayoth. R. Ashi and Rabina will be the finishers of the Gemara." \*

R. Kahana said: I was told by R. Hama, the son of Hassa's daughter, that R. b. Na'hmani's death occurred by conspiracy, namely : It was denounced to the Government that there was a man among the Jews who prevented thirteen thousand Jews from paying head-tax one month in summer and one month in winter time (*i.e.*, that in the months of Nissan and Tishri about thirty thousand men went to hear Rabba's lectures for the holidays, and the officers of taxes could not find them at home to collect the taxes. The Government sent an officer to take him, but could not find him at home. He went in search of him from Pumbaditha to the cities of Aqura, Agina, Ch'him, Tripha, and Eina Damim, and from Eina Damim back to Pumbaditha. It happened that the officer took the same inn in which Rabba was concealed. There was a set table for the officer, and after he drank two goblets of wine the table was taken away, and it happened that the face of the officer was turned backwards. The host came to Rabba, and questioned him what to do, as he was

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\* Rashi explains this, that until their time the Gemara was not in any order, as in the colleges a Mishna was discussed only in relation to money matters, food, etc., the Halakha thereof being questioned in a college ; and then there was discussion, and each gave a reason for his opinion, and the same was done if some one questioned the reason of such and such a Mishna, without a practical act ; and so the whole Gemara was mixed together, without any order in sections or tracts, and Rabina and R. Ashi were the first who gathered all the discussions of the colleges until that time, and also at that time arranged them into sections and tracts in accordance with the Mishnayoth ordained by Rabbi in sections and tracts. See footnote, Chap. II., pages 79, 80.

afraid of trouble because of the misfortune which happened to the officer of the king ; and Rabba ordered that a table should be set again with one goblet of wine, and thereafter to take the table away. They did so, and the man was cured. Then the officer said : I am now certain that the man I want is here. And he searched for him and found him, saying : I will go from here and report that I could not find him. Should they put me to death, I will not disclose it ; but should they torture me, I will tell the truth. He then took Rabba, locked him up in a chamber for men, and took the key with him. Rabba prayed, and the wall fell miraculously ; he ran away and went to Agina, sat down on a *crudum* of a tree, and was starving. In the meantime there was a dispute in the heavenly college about a case of purity, in which some of them decided that it is impure and some of them pure, and it was decided that R. b. Na'hmani should decide the case, as he used to say that he was the only one who knew the law of Nagaim and the only one who knew the law of Oh'loth. They sent the angel of death for him, but he could not touch him, as he did not cease studying one moment. In the meantime a wind blew and made noise with the trees of the forest, and Rabba thought that the officers were after him and said : It is better for me to die than to be taken by the Government. And when he was dying, he was questioned about the dispute in the heavenly college, and he decided it was pure. Then a heavenly voice came forth, saying : Well is it with thee, R. b. Na'hmani, that thy body is pure, and that thy soul left thy body while thou wast saying " pure." A *pitiacium* (writing) fell in the city of Pumbaditha : " Rabba b. Na'hmani was taken to the heavenly college." Then Abayi, Rabha, and all rabbis of the college went to occupy themselves with his funeral ; but they did not know where to find his body, and they went to Agina, and they saw a swarm of birds which made a shade under them, and they remained so, without moving, and the rabbis understood that this was the place where the dead was to be found. And they lamented for him three days and three nights. Another *pitiacium* was found : " He who will separate himself will be put under the ban." And they lamented for him seven days more. Then another *pitiacium* (from heaven) fell : " Go to your houses in peace."

On that day that Rabbi died a storm arose and threw a certain merchant who was riding on a camel on one side of the River Papa to the other side of the same. Being astonished, and ask-

ing, What is it? he was answered: Rabba b. Na'hmani is dead. He then arose and said: "Lord of the Universe! The whole world is thine, and Rabba b. Na'hmani is also thine. Thou dost love Rabba, and Rabba loveth thee—why, then, shouldst thou destroy the world?" And the storm abated.

R. Simeon b. Halaphta was a fat man.\* On one hot day he ascended to the top of a mountain to cool himself, with his daughter, telling her to fan him, promising her therefor a talent's worth of nard. In the meantime a wind began to blow, and he said: How many talents' worth of nard is to be given to the Lord of the winds?

*And all according to the custom of the country, etc.* What does the Mishna mean by adding the word "all"? It means in places where it is usually the custom to give the laborers, after their meal, a certain measure of beverage, so that the hirer had no right to say to the laborers to bring vessels for this purpose, but provide for them himself.

*It happened with R. Johanan b. Mathia, etc.* Is not this fact a contradiction to the Mishna's statement? The Mishna is not completed, and must read thus: If, however, the hirer has promised them food in such places as it is customary to furnish them with food without any promise, it must be considered that he has to furnish them with something better than customary, as it happened with R. Johanan b. Mathia, who said to his son: Go and hire laborers for us. He did so, with the understanding that they should be fed, and when he came to his father, he said to him: "My son," etc., . . . "as they are children of Abraham, Isaac, and Jacob."

Shall we assume that the meals of Abraham were better than those of Solomon? Is it not written [I. Kings, iv. 22, 23]: "And Solomon's provision for one day was thirty kors of fine flour and sixty kors of meal, ten fatted oxen, and twenty pasture oxen, and a hundred sheep, besides harts, and roebucks, and fallow deer, and fatted fowl." And Gurion b. Astirin, in the name of Rabh, said that the fine flour and meal were only for skimming the foam; and R. Itz'hak said, that each wife of the thousand Solomon had, used to prepare such a meal, thinking that he would come to partake his meal with her. And concerning Abraham it is written [Gen. xviii. 7]: "And Abraham ran unto the herd, and fetched a calf tender and good." And R.

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\* Because in the beginning of this legend it was spoken of fat men, this legend was also brought in (Rashi).

Jehudah said in the name of Rabh: A "calf" is one; "tender," two; and "good," three? Abraham took three oxen for three men (which makes an ox for each man). And concerning Solomon there were for the many people of Israel and Judah, as it is written [I. Kings, iv. 20]: "Judah and Israel were numerous as the sand which is by the sea," etc.

What is meant by fatted fowl? Rabh said: Crammed fowl. And Samuel said: They were fat without cramming. And R. Johanan said: An ox fed without doing any labor, and a hen that is not occupied with hatching.

R. Johanan said: The best of cattle is an ox, and the best of fowls is a hen. Said Ameimar: R. Johanan meant a black hen that feeds herself in the vineyard with the seeds of grapes.

It is written [Gen. xviii. 7]: "And Abraham ran unto the herd," etc. Said R. Jehudah, in the name of Rabh: A "calf" is one; "tender," two; and "good" is three. [Why not say one, as people say tender and good? Then it should be written, a "good, tender calf." Why "and good"? To signify that it was another one. But then there are only two? As the words "and good" signify another one, so signifies also the word "tender."] Rabba b. Ula, according to others R. Hoshia, and still according to others R. Nathan b. Hoshia, objected. Is it not written [*ibid.*, *ibid.*]: "And gave him to a young man, and he hastened to dress *him*" ?\*—*i.e.*, that each of them he gave to a separate man for dressing. Farther on it is written: "And he took cream and milk, and the calf which he had dressed," *i.e.*, that each which was ready first, he placed before them. But why were three necessary. Was not one sufficient? Said R. Hanan b. Rabha: He wanted to give to each of them a whole tongue with mustard.† Said R. Tan'hum b. R. Huilar: One must not change the custom of that place where he abides, as Moses, when he ascended to heaven, did not eat; and the angels of heaven, when they descended to earth, ate and drank. Ate and drank! Have they then a stomach? Say: it seemed as if they were eating and drinking.

R. Jehudah said in the name of Rabh: All that Abraham did for the angels by himself, the Holy One, blessed be He, did for his children by himself; and what Abraham did through a messenger, the Holy One did the same for his children through a

\* The expression in Scripture is *Outhou*, and means "him," which is singular. The translators of the Bible translate "it," according to the sense.

† Rashi explains that such a meal was only prepared for kings.

messenger : " And *Abraham* ran unto the herd " ; " and a wind went forth from the *Lord* " [Numb. xi. 31]. " *He* took cream and milk " ; " *I* will let rain for you bread from heaven. " " And he stood by them " ; " *I* will stand before thee " [Ex. xvii. 6]. " And Abraham went with them " [Gen. xviii. 16] ; " And *the Lord* went before them " [Ex. xiii. 21]. " *Let* a little water " ; " and *thou* shalt smite the rock " [Ex. xvii. 6]. And the same (Rab) differs with R. Hama b. Hanina, who said that in reward for three things which Abraham had done his children got three things; namely, for the cream and milk they were rewarded with *mannah*; for that " he stood by them " under the tree, his children were rewarded with the pillar of cloud ; and for " let a little water, " etc., they were rewarded with the well of Miriam.

" *Let a little water,* " etc. Said R. Janai b. Ismael : The angels said to Abraham : Do you suspect us to be Arabs who bow themselves to the dust of their feet ? Thou hast a son, Ismael, who is doing so.

" And the Lord appeared unto him in the grove of Mamre . . . in the heat of the day " [Gen. xviii. 1]. What does this signify ? Said R. Hama b. Hanina : This day was the third of Abraham's circumcision, and the Holy One, blessed be He, made him a sick call ; and to the end that Abraham should not trouble himself with guests, the Lord caused the day to be intensely hot, so that no one should go out. He, however, sent out his servant, Eliezer, in order to search for guests. He went, but found none. Abraham said : I do not trust you (this is what people say, there is no trust in slaves), and went out himself. Seeing the Lord, blessed be He, standing by the door, for that it is written : " Pass not away, I pray thee, from thy servant " [Gen. xviii. 3] (and to favor him, the Lord sent three angels), and for that it is written : " And he lifted up his eyes and looked, " etc. [*ibid.*, *ibid.* 2]. " He ran to meet them. " But is it not written, he stood near them ? Why, then, did he run after them ? Previously they were standing near him, but seeing that he was afflicted with pain, they withdrew, and he ran after them.

Who were these three men ? Michael, Gabriel, and Raphael. Michael came to give the message to Sarah, Raphael to cure Abraham, and Gabriel to destroy Sodom. But is it not written [*ibid.* xix. 1] : " And two angels came to Sodom " ? Michael accompanied Gabriel, in order to rescue Lot, and so it seems to

be as it is written : " And *he* overthrew," etc. [*ibid.*, *ibid.* 25]. It is not written they have done so. Why is it written concerning Abraham : " So do as thou hast spoken " ? [*ibid.* xviii. 5] ; and concerning Lot it is written, " and he pressed upon them " ? [*ibid.* xix. 3]. Said R. Elazar : Infer from this, you may decline an offer from a person inferior to yourself, but not from a superior. It is written : " And I will fetch a morsel of bread " ; and after this it reads : " And Abraham ran unto the herd." Said R. Elazar : Infer from this, that the upright promise little and do much, and the wicked promise much and do nothing. And where do you take it from ? From Ephron [*ibid.* xxiii. 15] : " A land . . . what is between me and thee " ; and farther on it reads : " And Abraham understood the meaning of Ephron . . . four hundred shekels of silver current with the merchant " [*ibid.* xix. 16]. Hence they did not take any other money but such as was current with merchants.

" And they said unto him, Where is Sarah thy wife," etc ? Said R. Jehudah, in the name of Rabh, according to others in the name of R. Itz'hak : Did the angels not know that Sarah was in her tent ? Why did they ask for her ? In order to increase her grace in the eyes of her husband. R. Jose b. Hanina, however, said : For the purpose of sending her a goblet of benediction.

It was taught in the name of R. Jose : Why are the letters A j v of the word אֵלָיו pointed in the Holy Scrolls ? The Torah teaches us to be kind in worldly affairs, that when one comes as a guest, he may make inquiries of the host for the health of his wife.

" After I am waxed old," etc. [Gen. xviii. 12]. Said R. Hisda : After her body was wrinkled, and the folds increased, the body was again made smooth, the wrinkles of age were straightened out, and beauty returned. It is written [*ibid.*] : " My lord being old " ; and farther on it is written : " I am old." Hence, the Holy One, blessed be He, did not refer to Abraham, as she said. From that the disciples of R. Ismael said : Great is the peace, as even the Lord changed her words for the purpose of peace, as it is written : " She said my lord is old . . . since I am old."

It is written : " Who would have said unto Abraham that Sarah should have given children suck ? " [Gen. xxi. 7]. How many children did Sarah suckle ? There was only one. Said R. Levi : That day on which Abraham weaned Isaac, he made a

great banquet ; and his neighbors of all nations murmured, saying : Behold, an old man and an old woman took a child from the market, proclaiming him for their own son. And this is not enough for them, but they are giving banquets, to convince people that it is as they say. What did our father Abraham ? He had invited all great men in his generation, and Sarah our mother invited their wives, and every one of them brought her child along, but without their nurses, and a miracle occurred to Sarah, that her breasts opened like two springs, and she nursed all the children there. But it was still murmured and said : As Sarah was only ninety years old, it is possible that she had borne a child miraculously ; but Abraham, who is over a hundred years, how is it possible that he should be able to beget children ? Then the face of Isaac at once changed, and became of the appearance of Abraham, so that every one proclaimed that Abraham begot Isaac. Until the time of Abraham there was no mark of old age, and he who wanted to talk to Abraham spoke to Isaac (when he was grown up), or *vice versa* ; then Abraham prayed, and the mark of old age was visible, as it is written [*ibid.* 47] : " And Abraham was old." Until the time of Jacob there was no sickness (and death occurred suddenly) ; and Jacob prayed that sickness would come before death ; as it is written [*ibid.* xliii. 1] : " Behold, thy father is sick." Until the time of the prophet Elisha there was no one who became cured from sickness ; but Elisha, however, prayed and was cured ; as it is written [II. Kings, xiii. 14] : " Elisha was sick of the sickness whereof he had to die," which signifies that previously he was sick and cured.

The rabbis taught: Three times was Elisha sick. First at the time he discharged Gekhsee from his service, and secondly when he set the bears on the children [II. Kings, ii. 24], and the third time when he died.

*With bread and pulse only.* Said R. A'ha b. R. Joseph to R. Hisda: Does the Mishna state bread of pease or bread and peas ? And he answered: By God the letter " Vahv " (which means " and ") is required to be as large as a rudder of the Labroth.

*Rabban Simeon b. Gamaliel, . . . all must be according, etc.* What does he mean by the word " all " ? This was learned in the following Boraitha: " If one hires a laborer, to pay him in accordance with the custom of this city, he may pay him according to the smallest scale of wages ; so is the decree of

R. Jehoshua. The sages, however, say the payment must be at a middle rate, neither too high nor too low."

MISHNA II.: The following laborers have a right, according to the law of Scripture, to partake of the fruits of their laboring: They who are engaged with the growing of produce may partake of that which is ripe, but is still attached to the ground, and also of the produce which is already cut off from the ground, but not yet ready for delivery. However, the above must be produced from the ground. They must not, however, partake of the fruits of their laboring if the produce is attached to the ground, but not ripe, and also if it is cut off and ready for delivery; neither may they partake of the fruits of labor of which the products do not grow in the ground (as, *e.g.*, the milking of cattle or the making of cheese).

GEMARA: Whence is all this deduced? It is written [Deut. xxiii. 25]: "When thou comest in thy neighbor's vineyard, thou mayest eat," etc. This is only concerning a vineyard. Whence do we know that the same is the case with other places? We infer it from the case of the vineyard, thus: As in a vineyard, the products of which come forth from the ground, a laborer may eat of its fruits when they are ripe, the same is the case with other things brought forth from the ground, when they are ripe. But it can be said that this law is only concerning a vineyard, because the law of gleaning [*ibid.*, *ibid.* xxiv. 21] applies only to gleaning; therefore we may infer this from stalks [*ibid.* xxiii. 26]: "When thou comest into the standing corn of thy neighbor, thou mayest pluck," etc. But even to this there is a separate law, which applies to stalks only; namely, to separate the first dough. Then we turn again to the vineyard, and to the former question it is answered that there is a separate law of gleaning; we turn again to the stalks, and the conclusion is that both cases have separate laws which apply each to itself specially, and one to the other specially. In one thing, however, they are alike, the products of both are brought forth from the ground, and when ripe a laborer may partake of them. The same is the case with all products that are brought forth from the ground, and when they are ripe the laborer engaged in producing them may partake of them. But their likeness is further seen in that they are brought to the altar (wine to the offerings, and fine meal to meal-offerings)? Therefore, olive trees may also be inferred from this, as oil from the olives is also brought to the altar with the meal-offering. [Is it, then, necessary to

infer olives from vineyards and stalks? Are the olives themselves not called a vineyard; as it is written [Judges, xv. 5]: "And burnt up both shocks and standing corn, as also oliveyards"?\* Said R. Papa: It is named a vineyard of olives (*Kerm Zayith*), but not indefinitely a "vineyard," which does not include olives. And the above-cited verse reads, "when thou comest in the vineyard," therefore olives are to be inferred from above.]

But, after all, whence do we deduce about all other products which cannot be inferred from what is mentioned above, as all are distinguished by separate laws applying only to them? Therefore said Samuel: We infer all from the words of above-cited verse [Deut. xxiii. 26]: "But a sickle shalt thou not move," which means that to all products under a sickle the same law applies. But is this verse not needed to teach that one may partake of them as long as the sickle is used, but not thereafter? Nay; this is inferred from the previous verse [25]: "But into thy vessel shalt thou not put it." But according to Samuel's theory, whence do we deduce about products which are not under the sickle (as, *e.g.*, dates, etc.)? Said R. Itz'hak: It is to be inferred from the words "standing corn" that the same is the case with all products which are standing. But was it not previously said that this cannot be inferred from stalks, as they are distinguished with the law of the first dough? This was said before it was learnt that it may be inferred from the words "under the sickle"; but after it was learnt of all products which go under the sickle, the same is said of all standing products.

If so, to what purpose is written the above-cited verse 25? Could it not be deduced from the 26th? Said Rabha: It is needed to infer from it the Halakhas of the following Boraitha: It is written *Khe Th'bhan* (when thou comest), and in xxiv. 15 is written *Lou Th'bhan*, as there the verse applies to a laborer. So the verse xxv. 23 applies also to a laborer. It reads, "in thy neighbor's vineyard"; but not in a vineyard of the sanctuary. "Thou mayest eat grapes," but not drink the wine of them (*i.e.*, one shall not take the grapes, make wine, and drink it). Grapes only, but not with something else (*i.e.*, one shall not mix them with something else which might increase the appetite for them). "At thy own," *i.e.*, as if thou wouldst be the owner of

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\* The term in Hebrew is *Kerm Zayith*, literally, a vineyard of olives; hence the question.

them: as the owner may partake of them before the tithe is separated, so may the laborer also. "Till thou have enough," but not more; "but into thy vessels thou shalt not put"—*i.e.*, that at the time you put them in the vessels of the owner you may eat, but not when you are not so engaged.

Rabbina, however, said: There is no necessity to deduce from verses in the Scripture concerning a laborer when he is engaged with the products when they are already cut off from the ground, and also for an ox that it may eat from the attached products of the ground, because it is written [Deut. xxv. 4]: "Thou shalt not muzzle the ox when he thresheth out the corn." Now let us see! This law applies to all animals, as it is stated in First Gate (p 127). It ought to read: "Thou shalt not thresh with a muzzled ox." Why, then, is ox mentioned? To compare the muzzled with the muzzler (*i.e.*, the man who muzzles the cattle). As the muzzler may eat of the attached article when it is ripe, the same is the case with the muzzled animal; and as the muzzled one may eat all that which is not still attached to the ground, so also may the muzzler.

The rabbis taught: It is written "threshing" [Lev. xxvi. 5]; as the threshing is only upon products brought forth from the ground, of which the laborer may eat, the same is the case with all products of the ground, excluding him who milks, and makes cheese and butter, which are not products from the ground, and of which a laborer must not eat.

Was it not deduced already from the verses stated above? Why then this Boraitha? Lest one say that because all the products which are standing were included, as stated above, therefore the products not brought forth by the ground should also be included, it comes to teach us that it is not so. There is another Boraitha: "As threshing applies only when the product of which a laborer may eat is ready, the same is the case with other products which are ready, excluding those who lop garlic and onions (for the purpose of making more room for the good plants to grow)—a laborer may not eat of these, as they are not yet ripe." And still another Boraitha: "A threshing applies to grain which is not yet fit for separating tithe, and a laborer may eat of it; the same is the case with other things which are not yet fit for separating tithes, excluding those who separate dates and dry figs, which are fit already for separating tithes—the laborer must not eat thereof." But did not another Boraitha state that a laborer who does so may eat thereof? Said

R. Papa: That Boraitha speaks of unripe dates which are taken off the trees in vessels made of palms, and are soaked in oil until they become ripe, and at that time they are not yet fit for separating tithes. There is still another Boraitha: "As threshing applies to such things as are not yet ready for separating the first dough, a laborer may eat thereof; but he who kneads or bakes must not eat of that which he handles, because it is already fit for the first dough; and this Boraitha speaks of countries which are out of Palestine, to which the law of tithe does not apply."

The schoolmen propounded a question: May a laborer roast the grain on fire and eat it? Shall we say that this is the same as grapes with something else, which is not allowed, or is this different? Come and hear! It is allowed for the owner of a vineyard to give to his laborers wine, that they do not eat too many grapes; and the laborers also may soak their bread in herring-pickle, that they may eat more grapes thereafter (hence we see that such things are allowed). (Says the Gemara:) The schoolmen did not question whether the men prepare *themselves* to eat more or less; their question was only whether it was allowed to prepare the fruit by sweetening it, that it might become better for eating? Come and hear! Laborers may wait until the sun warms the grapes before eating of them; they are not allowed, however, to heat grapes over fire (hence it is not allowed). From this nothing is to be inferred, as it may be it is not allowed because of the loss of time, and the question of the schoolmen refers to when he has with him his wife or children, who may heat the grapes for him? Come and hear! A laborer who is engaged in separating spoiled figs, dates, grapes, or olives may eat of them, though tithe is not yet separated; to eat them with their bread, however, they are not allowed, unless they do so with the consent of the owner. Neither may they use salt in eating them (hence to heat over fire is all the less allowed). (Says the Gemara:) Neither from this is anything to be inferred, as salt is certainly equal to grapes with something else, which is not allowed, as stated above.

The rabbis taught: Cows which are engaged in separating the shells from barley that has been dried in an oven, or which are threshing grain of heave offering or of tithe, there is no transgression when one muzzles them. However, that people who are not aware the grain is of such a kind may not be misled, a handful of the grain may be taken and put in a sack and

hung on their necks. R. Simeon b. Johai, however, said: He may put spelt in sacks and hang them on their necks, as spelt is better for the cow in every instance. There is a contradiction from the following: "Cows that are engaged in shelling grain when they are muzzled, there is no transgression; if, however, they are threshing heave offering or tithe, there is transgression if they are muzzled. The same is the case when an Israelite does the threshing with the cow of a Gentile; if, however, a Gentile threshes with the cow of an Israelite, there is no transgression." Hence there is a contradiction in the statements of the Boraithas in the case of heave offerings and tithes? It presents no difficulty. One Boraitha treats of the heave offering of the tithe, which is not doubted; and the other treats of a suspicious one (De Mai).

The schoolmen questioned R. Shesheth: "How is the law if the animal is sick and the consuming of grain injures it? May it be muzzled?" Shall we assume that, when commanded not to muzzle the animal, it is because what it may consume is good for it, so that, in the case questioned, muzzling is allowed; or is the above commandment because of the suffering of the animal on seeing the grain and not being able to eat of it, in which event the muzzling is prohibited even in the case mentioned? And he answered: This we have learned in the Boraitha mentioned above, as Simeon b. Johai said: "He may bring spelt, etc., because spelt is better for the cow." Hence we see that the reason for prohibiting muzzling is because the grain is good for the cow.

The schoolmen propounded a question: "May one say to a Gentile: Muzzle my cow and thresh with it? Shall we assume that the rabbinical prohibition to do through a Gentile what is prohibited for an Israelite to do himself is only concerning Sabbath, the violation of which is a crime, but that the prohibition of muzzling, which is only a negative commandment, does not exist in such a case, or is there no difference?" Come and hear! "When a Gentile threshes with the cow of an Israelite, the Israelite does not transgress if the animal was muzzled." Is it not to be inferred that he does not transgress the commandment, but that, nevertheless, the muzzling is prohibited? Nay; from this expression nothing is to be inferred, as it may be that it is used only because of the same expression in the case of an Israelite threshing with the cow of a Gentile, in which it was necessary to state that he commits a transgression. (Then) come and

hear! A message was sent to the father of Samuel with the following question: When Gentiles steal bulls and castrate\* them, and return them to the owners, may the Israelites use them or not? And his answer was: "There is craft used in doing this thing. Use the same with the owners, and make them sell the animals" (to Gentiles, so that the owners may not use them for ploughing. Hence we see that the violation of even a negative commandment, which is not a crime, must not be committed through a Gentile). R. Papa, however, said: "The people of the west, who sent the above question, hold with R. Hidga, who maintains that the children of Noah (*i.e.*, others than Jews) are warned biblically against castration, and the owners of the above-mentioned castrated oxen transgressed the commandment [Lev. xix. 14]: "Thou shalt not put a stumbling-block before the blind." Rabbi meant to say that the answer of the father of Samuel, "Make them sell them," meant that they were to be sold for slaughtering, so that no one should use them any more. Said Abayi to him: "It is sufficient fine for the owner that he must sell them for any purpose, and to any one, Israelite or Gentile."

There is no doubt that a son of full age is considered a stranger to his father that he may sell to his son; but how is the law with a minor son? R. A'hi prohibits, and R. Ashi allows. Maremar and Mar Zutra, according to others, two certain pious men, used to exchange between themselves the oxen in question for other ones. Rami bar Hamai questioned: "Does one transgress if he has placed the young one of the cow on the outside of her for the purpose of keeping the cow from consuming the grain while threshing, or if he has engaged it while it is thirsty, or if he has spread a *καταβολή* on the grain?" One of the questions at least may be resolved from the following Boraitha: The owner of the cow is allowed to make it hungry that it may eat more while threshing; he may also give it sufficient food beforehand, that it may not consume much while threshing (and this can be compared to spreading a *katabole*, hence it is allowed).

R. Jonathan questioned R. Simai: "How is the law if he has muzzled the animal outside of the field? Shall we assume that the Scripture prohibits muzzling it while threshing only, or

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\* Castrating is prohibited to Israelites biblically, and the Gentiles, who were friends of the Israelites, used to steal the bulls for this purpose, and return them afterwards. Hence the question.

does the Scripture mean that grain shall not be threshed with a muzzled animal?" And he answered: "This can be deduced from [*ibid.* x. 9]: "Wine or strong drink shalt thou not drink, . . . when you go in unto the tabernacle"; from which it could be inferred that this is prohibited when you go in, but not previously. However, it reads [*ibid.*, *ibid.* 10]: "So that you may be able to distinguish between the holy," etc., which means you must not go in while drunk (no matter when you have used the strong drink). The same is the meaning here: there shall be no muzzling while threshing.

The rabbis taught: "He who muzzles a cow and he who pairs two kinds of animals in one wagon is exempt from the punishment of stripes, as it applies only to the threshers and the leader of them."

It was taught: "If one has muzzled a cow only with his voice (*e.g.*, when the animal is about to eat of the grain he stops it with his voice), or if one leads the two kinds of animals with his voice only (without holding the bridle), according to R. Johanan he is guilty, because his voice is considered an act, and according to Resh Lakish he is free, as the voice is not considered an act. R. Johanan objected to the decision of Resh Lakish from the following Mishna (Themura): "One is not allowed to exchange; but if he has done so, the exchange is valid, and he is punished with forty stripes" (hence we see that though it was done by mouth only, it is considered an act, for which he is punished with stripes). And he answered: This Mishna is in accordance with R. Jehuda, who holds that one is to be punished with stripes for violation of a negative commandment, even if there is no *physical* act; but how can this Mishna be explained in accordance with R. Johanan? Did not the same state in its first part that the law of exchange applies to every one, male as well as female? And to the question: What does it mean by adding the expression "to every one" (would not "he" be sufficient for male or female)? The answer was: To include an heir, and this is certainly not in accordance with R. Johanan, as he holds that an heir cannot exchange, and also has no right to lay his hands upon an offer? The Tana of the Mishna cited holds with R. Johanan in one thing, but differs from him on the other point.

The rabbis taught: He who muzzles the cow while threshing is punished with stripes, and pays for the cow four kabs, and for an ass three kabs of fodder. But how is it possible that one

should be punished for one crime with two punishments? We are aware that if, *e.g.*, one deserves stripes for one crime, and for another, death, the stripes must be omitted, and the same is the case with a crime for which he has also to pay for the damage he has done when the crime was committed; the first punishment only must be imposed, and he is free from payment? This Boraitha is in accordance with R. Meir, who says that both are imposed. Rabha, however, said: There are many cases in which, although one is not obliged to pay the damages, he nevertheless has to pay, from a moral standpoint; and my support is from the Scripture, which forbids the hire of a harlot to be used in the temple, even if she was a relative, for which crime one is to be stoned (hence the hire is considered a payment), although it is not collected by the court. R. Papa said: The reason he has to pay in this case, despite his punishment with stripes, is because the obligation to pay was incurred before the crime for which he is to be punished with stripes was committed; he has to feed the animal as soon as he takes possession of it, and he cannot be punished with stripes until he has done work with it.

R. Papa said: The following two things were questioned of me by the disciples of R. Papa bar Abba, and I decided one of them in accordance with the law, and the other differently; namely, May one knead dough with milk or not? And my answer was: "Nay," according to the law [see Psachim, p. 45]; and the other question was, May one enter two kinds of animals in one stable? And I prohibited this, not in accordance with the law, as Samuel allows it. R. Jehuda said: One may gender one kind of animals with his hands without any fear even for immorality, as his mind is occupied with the expected product. R. A'hdbui b. Amui objected: There is a Boraitha: If the Scripture read [Lev. xix. 19]: "Thy cattle shalt thou not let gender," only, I would say that one must not gender any kind of animal at all; but as it is added, "with a diverse kind" (*kilaem*), it signifies that only *kilaem* is prohibited. But with one kind of cattle one may gender; and also, in that case, he may only hold it for this purpose. Hence we see that only to take hold is allowed, but not to gender? The expression, "to take hold," means to gender; and it was used only because of its being a nicer expression.

R. Ashi said: I was questioned by the disciples of R. Nehemia the Exilarch as follows: "Is it allowed for one to enter in

one stable two kinds of animals with their females? Shall we assume that because there are male and female of the one kind it does not matter about the presence of another kind, or is even this not allowed?" And I have answered them in the negative, not in accordance with the law, but because of the immorality of the Exilarch's slave.

MISHNA III.: The labor of a workingman entitles him to consume the fruit of that with which he is laboring, no matter with which member of his body he is doing the work; so that if he has worked with his shoulder, without occupying his hands or feet, it is sufficient. R. Jose ben R. Jehudah, however, maintains that he is entitled only when he employs his hands and feet in the work.

GEMARA: What is the reason of this statement? It is written [Deut. xxiii. 25]: "When thou comest into thy neighbor's," etc., signifies that it suffices when he enters to labor with any member of his body. And what is the reason of R. Jose's statement? He maintains that the muzzler shall be equal to the muzzled one; as the latter is entitled only when it is occupied in its labor with its hand and feet, the same is the case with the muzzler.

Rabbi bar Huna questioned: If one threshes with geese and cocks, how is the law according to R. Jose's theory? Does R. Jose mean that one is entitled to eat only when he works with all his strength? And if so, then the geese and cocks which are working with all their strength are entitled to eat. Or does he mean, literally, the hands and feet, and as in this case they have none they are not entitled to eat? This question remains undecided.

R. Na'hman, in the name of Rabbi bar Abuhu, said: Laborers who enter the wine-press are entitled to eat grapes, but not to drink wine; however, they are entitled to both if they cross the whole length of the wine-press while laboring.

MISHNA IV.: If one is occupied with pressing dates, he must not consume grapes, and *vice versa*; however, he may wait until he reaches the places where the good ones are to be found, and eat from them. In all cases it is said that he may consume only while he is laboring. In order not to waste the time of the owner, it was enacted that the laborers may consume when they are going from one place to another, and also when they are returning from the wine-press; and also an ass is entitled to consume while unloading.

GEMARA: The schoolmen propounded a question: If one was occupied with one vine, may he take a bunch of grapes from it to consume while laboring on another vine? If we assume that a laborer is entitled to consume of that kind which is to be put in the vessel of the owner, then he certainly may do so, or he is entitled to consume only from those which are to be put in the vessel of the owner; and as the grapes of the first vine were not to be put in the owner's vessel, he may not eat of them; and lest one say that he may not, then there would be difficulty in understanding why the ox, while laboring at things which are attached to the ground, may eat of them, because those attached to the ground are not to be put in the vessels of the owner. Said R. Shesheth b. R. Aidi: This case cannot prove anything, as it may mean that a branch with fruit reaches the laboring ox, but not otherwise. Come and hear. Our Mishna states that if one is occupied with dates he must not consume grapes; from which we infer that he may consume of one kind of fruit. Now, if it be not allowed to take fruit from one vine when he is going to labor on another, how could such a case be found? Said R. Shesheth b. R. Aidi: This proves nothing, as the Mishna may treat of a case where the dates were resting on the vine, or *vice versa*; and it came to teach that although he cannot occupy himself unless he takes of the dates resting upon the grapes, and one may say that in such a case he is considered to be occupied with both, the Mishna teaches that is not so (and so it is not safe to infer from this that if he is occupied with one kind of fruit in one place he may partake of it while laboring on another of the same kind). Come and hear! The latter part, "One may wait until he reaches the place where the good ones are," etc. Now, if one would be allowed to eat of the fruit on which he is not occupied, at another place where he is occupied, then why should he *wait* until he reaches the place of the good ones? Let him immediately bring and eat of it. Nay; it may be that he is not allowed to do so because of wasting time. However, if so, the question may arise: How is it if he has somebody—*e.g.*, his wife or his children who are not laboring there—and they can bring him the good ones, so that there is no waste of time; may it so be done or not? Come and hear the other statement of our Mishna: "In all cases, . . . however, in order not to waste time," etc. And the schoolmen, in explaining the reason for this statement, were about to say that because, biblically, walking is not considered labor,

one, biblically, is not allowed to eat in that case. Therefore the enactment in question was necessary, from which it is to be inferred that when one is laboring he may consume even biblically, and it may be decided that he may do so. However, it may be said that walking is considered labor, and yet according to the Bible walking is not considered labor, and yet according to the Bible one may not do so, and therefore the enactment was necessary; hence the question may be decided negatively.

*An ass is entitled, etc.* While unloaded! From what, then, shall it consume? Correct the Mishna so that it reads, "until it is unloaded"; and this is the same as the rabbis taught elsewhere, that an ass and a camel may consume from the load which is upon them. However, one may not take of the load with his hands and give them to eat.

MISHNA V.: The laborer may consume of cucumbers or dates with which he is working, even to a dinar's worth. R. Elazar b. Hasma, however, said: A laborer must not consume more than his wages; but the sages allow even this. Nevertheless, a man should be instructed that he must not be greedy, so that the doors of mankind should not be shut against him.

GEMARA: Are not the sages' statements the same as the first Tana? The point of difference can be found in the following saying of Rabh: I have found hidden scrolls in the house of R. Hyya, in which it was written as follows: "Aisi b. Jehudah says: The verse written [Deut. xxiii. 25]: 'When thou comest in the vineyard of thy neighbor,' means not only a laborer, but anybody." And Rabh himself added: "Aisi's theory does not allow any one to make a living" (*i.e.*, if it would be allowed for every one to enter the vineyard of a stranger, and to consume, as much as he likes, then nothing would remain for the owner). So that the first Tana does not agree with Aisi, and the sages do. Said R. Ashi: I have repeated this Halakha before R. Kahanah, and questioned him whether it meant laborers who are doing their work for their meal only; and he answered me: That even then one would prefer to hire men to cut off the trees of his vineyard than to have people enter and consume all it contains.

The schoolmen propounded a question: Are we to interpret the command of the Scripture, that a laborer may eat in addition to his wages (*i.e.*, the Scripture has added to his wage the consuming of the fruit he is engaged with, consequently it is a part of his wages; or is it only a kind of charity which the

Scripture commands to give him)? And the difference is, if the laborer says: "Give this that I am entitled to to my wife and children." If it is a part of his wages, this could be done; but if it is only a kind of charity, it may be said that the Merciful One has rewarded only the laborer himself, but not his wife and children. What is the law? Come and hear! R. Elazar b. Hasma said: A laborer must not consume more than his wages allow. Are we not to assume that the point of their differing is that one holds that this is a part of his wages, and the other holds that it is a kind of charity? Nay, all agree that this is a part of his wages; and the point of their differing is the explanation of the word *knaphshkha*,\* which is mentioned in the Scripture [*ibid.*, *ibid.*]. One holds that this word may be interpreted, "a thing which you get with danger to your life" (*i.e.*, if one undertakes to ascend to the top of the tree in order to get the fruit), and the other interprets this word, "as thy soul" (*i.e.*, as for thy soul thou likest to muzzle thyself not to partake, thou mayest do so; the same is the case with the laborer, in some instances thou mayest prevent him from consuming). Come and hear! "A laborer who was a Nazarite, if he said, Give the grapes or wine that I am entitled to to my wife and children, he must not be listened to." Now, if this is a part of his wages, why should he not be listened to? Nay; there is another reason. People say, it must be said to a Nazarite, Go around, go around, so that you shall not meet a vineyard (*i.e.*, the things which are forbidden to him should not be found near him). Come and hear another Boraitha: If a laborer said the same, he also must not be listened to; hence if this is a part of his wage, why should he not be listened to? Nothing is to be inferred even from this, as the expression, "a laborer," may be interpreted to mean a Nazarite. But is there not a separate Boraitha which says plainly "a Nazarite"? This is no question, as the Boraithas were taught separately. One plainly states a Nazarite, and the other named a laborer, which means also the same. Then come and hear another Boraitha: From this we deduce that a laborer must not be listened to when he asks that that which he is entitled to shall be given to his wife and children, from the verse [*ibid.*, *ibid.*]: "But into thy vessel thou shalt

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\* *Nephesh*, in Hebrew, means "soul"; *knaphshkha*, literally, "as thy soul." Hence the expression "soul." R. Elazar maintains: "When thy soul is in danger," and the sages interpret this as: "You can do with your soul." Leeser, however, translates it according to the sense, "as thy pleasure."

not put any." And lest one say that this Boraitha also means a Nazarite, then this verse would be used as a reference, because for a Nazarite there is another reference given above? Yea; it may mean a Nazarite, but the verse belonging to a laborer is brought because one has named him a laborer.

Come and hear another Boraitha: If one hires a laborer to cut dates, he may eat of them and he is free from tithe. But if he was hired with the stipulation that "I and my son shall partake of it," *he* may and is free from tithe; his son, however, may eat only when the tithe is separated. Now, if this is a part of his wages, why, then, should his son not be free from tithe? Said Rabbina: Because the fruit used by his son is considered bought, as the son has nothing to do with it, and only consumes because of the stipulation of his father, who gave his word for it. Consequently, it is as if he had bought and sold it. Come and hear the next Mishna, which states that a stipulation can be made for all his family except the little children, etc. Now, if this is considered a charity, it is right that no stipulation should be made for his little children, if they have not reached the age of reason; but if it is a part of his wages, why should not the stipulation be of value for the children also? It may be said that it means when he does not feed them. But did not R. Hoshua teach that "one may make a stipulation for himself and for his wife, but not for his cattle; for his sons and daughters who are of age, but not for those who are not yet of age; however, for his male or female slaves whether they are of age or not"? From this we infer that all the Boraithas mentioned mean when he feeds them all; and the point of the difference is that the Tanaim of the above Boraithas and also of the cited Mishna hold that it is only a kind of charity, and R. Hoshua holds that it is a part of his wages.

**MISHNA VI.:** A laborer has the right to make a stipulation that he shall not eat what he is entitled to and take money for it instead. He has also a right to do the same for his grown son and daughter, for his wife, and for his grown-up male and female slaves, but not for his minor children or slaves, and not for his cattle, because these have no reason. If one hires laborers to work in his vineyard when it is in its fourth year (of which the fruit is prohibited), the laborers must not partake of it. If, however, he didn't notify them of the case, he must redeem the fruit and let them eat. If the round cakes of his dry figs became open, or his barrels of wine became ready for

use, so that they are fit for separating tithe from them, the laborers must not eat; but if, however, he didn't notify them at the time he hired them, he must separate the tithe and let them eat.

Watchmen of fruits are permitted to eat, according to the custom of the country, but not according to the law of the Scripture.

GEMARA: (Concerning the watchmen:) Said Rabh: The Mishna treats only of watchmen who guard vineyards, the fruit of which is still attached to the tree, and therefore, according to the Scripture, they are not to eat of it when it is not yet ripe. But they who guard wine-presses and heaps of grain are permitted to eat even in accordance with the law of the Scripture; for the reason that guarding is considered a labor. Samuel, however, maintains that the Mishna treats of those who guard wine-presses and heaps of grain; but they who guard vineyards are not entitled even in accordance with the law of the country, for the reason that guarding is not considered labor according to his opinion. R. Aha bar Huna objected to this from the following: "He who guards the red cow defiles his garments." Now, if guarding is not considered an act of labor, why should his garments be defiled? Said Rabba bar Ulah: It was enacted to be so for fear he would touch one of its members. R. Kahana objected from the following: If one guards cucumber fields, he must not fill up his belly from one garden bed, but he may eat some from each bed. Now, if guarding is not considered labor, why is he entitled to eat at all? Said R. Shimi bar Ashi: The Boraitha treats of those that were already cut off. But if so, then they are already fit for tithe? It treats in case the blossoms are not yet removed. Said R. Ashi: It seems to me that Samuel is right in his theory, and he can be supported from Mishna II. in this chapter: "The following laborers have a right to partake according to the law of Scripture," etc. From which it is to be inferred that there are such who eat not in accordance with law of the Scripture, but in accordance with the law of the country. How, then, should the latter part of the same be explained: "They have not to partake," etc.? What does the expression "not to partake" mean? If we say that they are not to partake in accordance with the law of the Scripture, but that they may partake in accordance with the law of the country, then it would be the same as in the first part; we must, then, say they are not to partake even in accordance with

the law of the country. And what is this? One who is engaged on that which is still attached to the ground and is not yet ripe, and, furthermore, the watchmen of the vineyards.

MISHNA VII.: There are four kinds of bailees: a gratuitous bailee, a borrower, a bailee for hire, and a hirer. (In case of loss,) the first is acquitted on taking an oath that he has not neglected his duty; the second has to pay under all circumstances; the third and fourth are acquitted in case the property entrusted to them has been broken, confiscated, or has died, but not when it has been lost or stolen.

GEMARA: Who is the Tana who states that there are four kinds of bailees? Said R. Na'hman, in the name of Rabba b. Abuhu: It is R. Mair. Said Rabba to him: Is there one who does not hold the theory of the four bailees? R. Na'hman rejoined: I mean to say that the only one who holds that a hirer and a bailee for hire are equal in law is R. Mair.

Is this so? Has not R. Mair said the contrary in the following Boraitha? For what loss must a hirer pay? R. Mair said: For the same that a gratuitous bailee must pay. R. Jehudah, however, said: For the same loss as a bailee for hire. (Hence R. Mair holds that a hirer is the same as a gratuitous bailee?) Rabba b. Abuhu has changed the names (in the quoted Boraitha). If so, then there are three, not four, kinds of bailees. Said R. Na'hman b. Itzhak: There are four kinds; the laws concerning them, however, are only three.

There was a shepherd who pastured his cattle on the shores of the River Papa. One of the cattle slipped and fell into the water. When the case was brought before Rabba he acquitted him, saying: What could he do? He has guarded them as is usual with shepherds. Said Abayi to him: In accordance with your theory, if the shepherd entered the city at the usual time, is he also acquitted? And he answered, "Yea." And what if he sleeps at the usual time, is he also freed? And the answer was, "Yea."

Then R. Abye objected to him from the following: The accidents for which a bailee for hire is not responsible are, *e.g.* [Job, i. 15], "When the Sabeans made an incursion and took them away." (Hence we see that he is responsible only for such things as he could prevent, but not otherwise. And Rabba answered: The Boraitha treats of the watchmen of the city who were hired to watch all night, so that their employers might rely upon them to prevent all accidents. Abye raised

another objection from the following: What is the extent of the duty of a bailee for hire, as, *e.g.* [Gen. xxxi. 40]: "(Where) I was in the day the heat consumed me," etc.? And he answered: This Boraitha also means the watchmen mentioned above. Abye rejoined: "Was Jacob the Patriarch a watchman of the night?" And he rejoined: "Yea; Jacob promised Laban that he would watch his (Laban's) cattle, as city watchmen watch the property entrusted to them." Abye then raised another objection from the following: "If a shepherd entered the city while his cattle were pasturing, and a wolf seizes a sheep, he must not be accursed. He must only be held responsible if it be adjudged by the court that his presence could have prevented the occurrence." Are we not to assume that the Boraitha means that the shepherd went to the city at the time that shepherds usually went there, and that even if this was the case he is held responsible for the accident? Said Rabha: "Nay; it means if he left the cattle at an unusual time."

Then, since he has neglected his duty, why should he be acquitted even if his presence could not have prevented the accident? The Boraitha treats of a case in which he (the shepherd) heard the voice of the wild beasts and fled. If so, why is it necessary to adjudge; what could he do under such circumstances? It would have been his duty to frighten the beast away by throwing stones and sticks. If so, why should only a bailee for hire do this; does not the same hold good for a gratuitous bailee? Was it not you, master, who said that if a gratuitous bailee could put the beast to flight with sticks and stones he is responsible?

Yea, I did say so; but this would only be the case if he could do this without incurring any expense; while the bailee for hire must do so even if he should incur expense. How much is it his duty to spend for this purpose? The amount that the article is worth. But where is it to be found that a bailee for hire is to be responsible for an accident, so that he is obliged to pay his own expenses? He is obliged to save them even when he must spend money, which, however, is returned by the owner.

Says R. Papa to Abye: If so, what good is it to the owner to have the property saved? And he rejoined: It saves him the trouble of buying others; besides, it is more pleasant for him to have the cattle which he is used to.

R. Hizda and Rabba b. R. Huna do not agree with the

above theory of Rabha, that if a bailee for hire has not neglected his duty he is not responsible for any accident; and the owner may say that he has paid for guarding the cattle in order that they may be guarded better than is usual.

Bar Adda of Sabula led cattle across the bridge of Narash, and one of them pushed the other into the water. When this case was brought before R. Papa, he held him responsible. When the defendant objected, saying: "What could I do?" he answered: "You could lead them across one by one." At this the defendant, however, exclaimed: "Does not the master know his people sufficiently well to know that they have not the time to lead them over one by one?" The judge then rejoined: Such claims have often been brought before the court, but they could not be taken into consideration.

Abu placed flocks at Rumnia, and Shabu, who was an errant robber, took them away. Although Abu proved that this was the case, R. Na'hman held him responsible. Shall we assume that R. Na'hman differs with R. Huna b. Abuhu, who sent a message, that if an article was thereafter stolen by accident, and the thief was identified, the depositary, if he be a gratuitous bailee, may choose either to take an oath or summon the thief. But if he was a bailee for hire he must pay and summon the thief. (Hence, as R. Na'hman made Runia, who was a gratuitous bailee, responsible, he certainly does not agree with the above theory of R. Huna ?)

Said Rabha: This proves nothing. As there was military in the city where Runia was, if he called for help they would have come to his assistance.

**MISHNA VIII.**: A single wolf coming among the flock, it is not considered an accident, while two constitute one. R. Jehudah maintains that at a time when there are visitations, a single wolf is also considered an accident.

Two dogs are not considered. Jeddna d. Babylon, in the name of R. Mair, said: If both come from one side it is not, but if they come from two different sides it is. A robbery is considered an accident. A lion, a bear, a leopard, a panther, and a snake are accident when they come suddenly; but if one has led his cattle where wild beasts or robbers abound, it is not considered an accident. A natural death is an accident, but not if it is caused by cruelty. If cattle fall from a steep rock where they have gone of their own accord, it is an accident, but if they are led there, it is not.

GEMARA: But have we not learned in a Boraitha that even a single wolf is considered an accident? Said R. Na'hman b. Itzhak: The Boraitha treats of a visitation, and it is in accordance with R. Jehuda.

*A robbery is considered an accident.* If there is only one robber, is there not only one man against one man? Said Rab: It means if the robber was armed. The schoolmen propounded a question: "If the robber and the shepherd were both armed, what is the law? Shall we say that as there was one against one, then it is not to be considered an accident? Or shall we say that as the robber risks his life, which is not the case with the shepherd, it is? Common sense says that it is so.

Said Abye to Rabba: If a shepherd meet a robber and say to him: "You ill-reputed thief, remember that we are located in such and such a place, where we have so and so many men, so and so many dogs, and so and so many archers with us, and if you venture to come to us you will be killed"; and if, in spite of this warning, the thief ventured to do so, how is the law? And he answered: Informing the thief of the location of the pasture is equal to the statement of our Mishna about leading the cattle to the place of robbery, etc.

MISHNA IX. : A gratuitous bailee has the right to make a stipulation that in case of loss he shall be freed from taking an oath. A borrower may do the same so as to be freed from payment. A bailee for hire and a hirer may likewise do the same, so that they may be freed from both an oath and from payment.

A stipulation made contrary to that which is written in the Scripture is of no avail. A stipulation which is made on condition that a certain act be done in advance is of no avail. If, however, the stipulation was that a certain act be done afterwards, and it is possible to fulfil the condition, the stipulation is of avail.

GEMARA: Why can a stipulation of this kind be made? Is it not contrary to what is written in the Scripture, and therefore ought it not to be unavailable? Our Mishna is in accordance with R. Jehudah, who said that in money matters a stipulation of this kind is of avail; as we have learned in the following Boraitha: "If one says to a woman: You shall be betrothed to me on condition that I will neither support nor dress you," the betrothal is valid, but the stipulation is to be abolished. So is the decree of R. Mair. R. Jehudah, however, maintains that in regard to money matters the stipulation is valid.

But how can we interpret the statement of our Mishna in

accordance with R. Jehudah, when in the latter part it plainly states that a stipulation made contrary to the Scripture is of no avail, which is certainly in accordance with R. Mair? This presents no difficulty, as the latter may treat of other than money matters. But still, if so, how would you interpret the last part of the Mishna, which states that "a stipulation which has an act in advance," etc., and such a theory was heard from R. Mair only, as stated in the following Boraitha: Aba'ha Laphtah, the man of the village of Hananya, said in the name of R. Mair that a stipulation which is to be fulfilled before an act is valid; but if the act is to be performed afterwards it is invalid? Therefore we must say that the whole Mishna is in accordance with R. Mair; and the reason the stipulation is valid is because he freed himself from all obligations before he became a bailee.

There is a Boraitha which says that a bailee for hire may stipulate that he shall be equal to a borrower. But how shall a stipulation of this kind be made verbally only? Said Samuel: It treats of when it was made with the ceremony of a sudarium. R. Johanan, however, maintains that even when a sudarium is not necessary—as the benefit which he derives is from the reputation he earns among the people of being a trustworthy man—he makes up his mind to take all responsibility.

*And it is possible to fulfil, etc.* Said R. Tabla, in the name of Rabha: This is in accordance with the decree of R. Jehudah b. Tama: The sages, however, maintain that even in such a case the stipulation is of avail. As we have learned from the following Boraitha: Here is your divorce, with the stipulation that you shall ascend to heaven, or shall descend to hell, or you shall swallow a stick a hundred ells long, or you shall cross the ocean on foot. If such a stipulation is fulfilled the divorce is valid; but if not it is invalid. R. Jehudah b. Tama, however, said that such a divorce is valid. Such is the rule: a stipulation which is impossible to be fulfilled should be considered a jest, and the divorce remains valid.

Said R. Na'hman, in the name of Rabba: The Halakha prevails in accordance with R. Jehudah b. Tama. Said R. Na'hman bar Itzhak: It seems to be so, as the last expression from our Mishna agrees with him.\*

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\* *Thsptk.* What news did R. Na'hman come to tell? This was already stated by Rabba, to which they answered in various ways. We have therefore translated R. Na'hman b. Itzhak in support of Rabba, that the anonymous Mishna agrees with him, and consequently the Halakha must so prevail.

## CHAPTER VIII.

### RULES AND REGULATIONS CONCERNING THE SALE AND HIRING OF ANIMALS, THE EXCHANGE OF THEM, THE SALE AND LEASING OF REAL ESTATE.

**MISHNA I.** : If one borrows a cow, and at the same time hires or borrows its owner, or if he does so before borrowing the cow, and the cow dies while they were laboring, the borrower is free from payment, as it is written [Ex. xxii. 13]: "And if one borrow aught of his neighbor, and it be hurt or die," etc. If, however, he has borrowed a cow, and has borrowed or hired its owner afterwards, and it dies, he is responsible; as it is written [*ibid.*, *ibid.* 13]: "The owner thereof not being with it, he shall surely make it good."

**GEMARA**: As in the latter part the Mishna states, "if he borrowed the cow afterwards," we may infer that in the first part it means that he has borrowed or hired its owner at the very time that he borrowed the cow. How, then, can there be a case in which the cow is borrowed by being led only, and its owner by words? And if the owner of the cow says to the borrower: "I and my cow are borrowed for your service," *he* is already considered borrowed, but the cow is not considered so until it is led off by the borrower. And so the owner was borrowed *before* the cow? If you wish, we may say that the stipulation was made that the owner shall not be considered borrowed until the leading of the cow takes place; and if you like, it may be said that the cow was already placed in the yard of the borrower, and in such a case leading it off is not necessary. We have learned in the Mishna that "there are four kinds of bailees," etc. Whence do we deduce all this? From what the rabbis taught. The first paragraph [*ibid.*, *ibid.* 6] treats of a gratuitous bailee; the second [*ibid.*, *ibid.* 9] treats of a bailee for hire; the third [13] treats of a borrower.

Says the Gemara: This is correct concerning a borrower, as it is so plainly written [verse 13]. But how do we know that the first and the second paragraph mentioned above are not the reverse? Common sense shows that the second paragraph

means a bailee for hire, as he is responsible for loss and theft. But perhaps the contrary may be said. The first paragraph may mean a bailee for hire, since he is responsible for the double amount if he claims theft. (This is no question.) It is more rigorous to pay the principal amount without an oath than the double amount with an oath. The evidence for this can be inferred from the case of a borrower who has all the benefit without any expense, and nevertheless he pays only the principal amount. But has not the borrower to feed it and also to guard it, consequently he has some expenses? It can be said that the borrower keeps it in a grazing place, which is also secured from thieves; or that he borrows vessels for which he has no expenses at all. It is stated in the same Mishna "that a bailee for hire and a hirer take an oath in case the borrowed thing breaks, is confiscated, or dies, but they pay for loss and theft." This is correct in case of theft, as it is written plainly [*ibid.*, *ibid.* 12]: "But if it be stolen he shall make restitution unto the owner thereof." But whence do we know that the same is the case with loss? Therefore the word "stolen" is repeated\* to include loss.

But this would be correct according to him who holds that the Torah does not talk as men talk. (Therefore, as there is a repetition, loss may be deduced.) But according to him who holds that the Torah talks like men, what can be said? It was said in the west that an *a fortiori* conclusion is to be drawn thus: For theft which is almost an accident one must pay; for loss which is almost a neglect, so much the more he must pay. Whence do we deduce that a borrower is responsible for any kind of loss? It is plainly written that he is responsible for anything broken or for death. But how do we know that he is responsible in case of confiscation also? And lest one say that this can be inferred from the case of broken or death, it may be objected that cases could be borne in mind which are not so in case of confiscation. It is from what R. Na'hman said in the following Boraitha: Since it is written in verse 13 [*ibid.*, *ibid.*], "hurt *or* dies," confiscation may be included. But is not the word "or" needed for itself? Because if it were not, one might say that the restitution must be made only if the article be both hurt *and* dead, but not if it were broken only.

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\* The term in the Scripture is *Ganub yganubh*; literally, stolen, to be stolen. Hence the repetition of the word theft. Leeser, however, translates according to the sense.

Nay, there could be no error, in either case, because common sense dictates that there is no difference to the owner if it were entirely or only half killed. Whence do we deduce that a borrower is responsible for theft or loss? And lest one say that this is to be inferred from the cases of damage or death, then it may be objected that the above cases are different, as they cannot be returned. But in case of theft or loss it can sometimes be returned if he troubles himself. Therefore it must be said that this is deduced from the word "and" in verse 6, which means that what is written above also belongs to this, and also that this corresponds with the above.

It was taught: In case of neglect in the presence of the owner, R. A'ha and Rabuna differ. One makes the borrower responsible, because he holds that a verse can be used only with that matter which was written previously in conjunction with it; and as verse 14 frees the one who has neglected his duty in the presence of its owner, it is not written concerning a gratuitous bailee, which begins with *ibid.*, verse 6 (although the law about neglect is mentioned there, and it is not mentioned concerning a bailee for hire and a borrower); therefore the responsibility of a neglect, just mentioned by the two, is to be deduced by drawing an *a fortiori* conclusion from a gratuitous bailee. However, to free one from the consequences of neglect done in the presence of the owner cannot be deduced, because verse 14, which freed them, does it only on the responsibility mentioned there. And the one who frees him holds that the law of a verse can be used in conjunction with that preceding it and that written before. Consequently, verse 14 refers also to a gratuitous bailee in verse 6.

An objection was raised from our Mishna, which states: "He who has borrowed the cow and the owner at the same time," etc.; but a gratuitous bailee is not mentioned there? (Hence there is an objection to him who says that a gratuitous bailee is free in case of neglect committed in the presence of the owner?)

But even according to your theory is there mentioned in the Mishna a bailee for hire? Therefore we must say that the Mishna teaches only things which are plainly written, but not things which are deduced.

R. Hamnuna said: There is no responsibility when the owner works together with the borrowed article—*e.g.*, when the owner of the borrowed ass works with it, and also when he is present

from the time the article is borrowed until it is broken; but not otherwise. (Says the Gemara:) From this statement it is to be inferred that he interprets verse 14, "that the owner must be with it the whole time." Rabha then objected from the following: "If one has borrowed or hired a cow and its owner at the same time, or borrowed the cow and hired the owner, although the owner did his work at some other place, the borrower is free from payment in case the cow dies." May we not assume that the same is the case even if the owner was engaged with another kind of work? Nay; it means the same work. What, then, is the meaning of "at another place"? *E.g.*, he digs after it the earth which it ploughs to make it ready for seed. But as the latter part of this Boraitha states plainly: "If one hired or borrowed a cow, and thereafter he borrowed or hired its owner, although the latter were engaged with his cow in *the very same work and at the same time*, the borrower is not responsible in case the cow dies." Consequently, the first part must speak of a separate kind of work he was engaged in? It can be explained that both parts of the Boraitha speak of one and the same labor, and by the change of expressions it was intended to add something unexpectedly new in the first part as well as in the last; namely, in the first part, that although he was engaged at another work, the borrower is free in case of the cow's death; and in the latter part, that even if he were working together with his cow there is a responsibility. But can such an explanation hold good? To be unexpectedly new it must be only if the cow were laboring at a separate work, and its owner at another kind of work; but if both are at the same work, it is very easy to be seen that he is free. Aside from this there is another Boraitha which states as follows: Because it is written [Ex. xxii. 14]: "But the owner thereof be with it," etc. Why, then, was there need to state, "the owner not being with it," etc.? Is the first not sufficient? It is only written to teach that if the owner were with it at the time of borrowing, there is no necessity for him to be also with it at the time it dies; however, if he were with it at the time it was dying or breaking, but not at the time it was borrowed, the responsibility remains. And there is also another Boraitha, similar to this, which objects to R. Hamnuna's statement, and so it remains. However Tanaim differ in the interpretation of the Scripture, in the following Boraitha it is written [Lev. xx. 9]: "For every man . . . that curses his father and mother shall be put to death,

that his father and his mother hath he cursed," etc. Now, from this it is known that when he curses both father and mother he is guilty; whence do we know that the same is the case when he cursed only one of them? Therefore the repetition, "his father and his mother," to teach that one of them is sufficient to put him to death. So is the decree of R. Jashia. R. Jonathan, however, maintains that from the repetition one cannot understand more than from the first sentence, as for both it could be explained that the two are meant or only one is meant. However, the law is correct as R. Jashia said, for if the verse would mean both *only*, it would state so plainly.

Abye, who agrees with the theory of R. Jashia, interprets the verses in question in this manner. From the verse [13] it is to be understood that when the owner was not present at both times mentioned above, but if he was present at one of the times only, he (the borrower) is free; and from verse 14 it is understood that when he was present on *both* occasions he is free, but if on *one* occasion only he is responsible. Therefore it must be concluded that if the owner was present at the time the animal was borrowed, there is no necessity for him to be present at the time of its death. But if *vice versa*, there is a responsibility. Rabha, however, agrees with the theory of R. Jonathan, and interprets the verses in question thusly: From verse 13 it may be understood that if he were present at both times, and also if he were only present at one of them, and the same may be understood from verse 14, and therefore we conclude that the law remains as Abye said (although I do not agree with his reasons).

However, whence do we know that the owner's presence at the time of borrowing is the main thing—perhaps the occasion of the accident is the main thing? Common sense shows that the former is the main thing, as this act only brings the article under the control of the borrower. On the contrary, common sense shows that death is the main thing, as a borrower is responsible for an accident? Nay; after all, the first is the main thing, as this act obliges him to feed it. Said R. Ashi: From the expression, "And if a man borrow aught of his neighbor" [*ibid.*, *ibid.*], it is to be inferred that he is responsible only when he borrowed *from* his neighbor, but not if his neighbor is with him. Then the continuation of the above-cited verse and what follows would be all superfluous? Nay; if not the following,

one may say that such expressions are customary in the Scripture.

Rabina questioned R. Ashi: If one tells his messenger that he shall substitute him in service to his neighbor together with his cow, how is the law if the cow breaks or dies while laboring? Is the word "owner" in the Scripture to be taken so particularly that no one can stand in his stead; or in such a case is the messenger of one considered as if it were himself? Said R. Aha b. R. Iwia to R. Ashi: "Concerning a husband who used the cow of his wife." R. Jonathan and Resh Lakish differ in regard to his responsibility, and concerning a messenger R. Jonathan and R. Ashi differ.

Said R. Eylish to Rabha: If one borrows another's slave and cow, how is the law? This question is to be considered according to the theory of both the Tanaim who differ in the case of the law regarding a messenger, whether he is considered a substitute or not. To the one who holds that he is considered a substitute, the question is the same as is the case with a slave, for the reason that the slave is free from the obligations of the law, and therefore he cannot substitute; on the other hand, according to him who holds that a messenger is not considered a substitute, it may also be questioned if the same is the case with a slave or if the latter is different, as he may be considered as the hand of his master (consequently he may stand for him?). And Rabha answered: "Common sense dictates that the hands of a slave are considered as his master's."

Rami b. Hama questioned: "A husband who uses the estate of his wife, what should he be considered, a borrower or a hirer?" Said Rabha: "Only a man of such genius is fit to make such an ingenious error. What difference is there if he is considered a borrower or a hirer? In both cases it must be considered that the owner of the property is with him; consequently there is no responsibility." The question, however, by Rami bar Hama could be raised in case one has hired a cow of a woman and thereafter married her. If the husband is considered a borrower, then he is not responsible, as the owner of the article borrowed is with him; or if he is considered a hirer, the law of a hirer consequently remains. But what is the difference? Is it not a fact that now the owner of the hired article is with him, and this should supersede the previous act which was without the hirer; as we say the same in case he is considered a borrower?

Therefore, if Rami raised a question it must be thus: If a woman has hired a cow from any one, and afterwards she married, then, in accordance with the rabbis, who hold that the borrower has to pay to the hirer, there is no question, as the owner of the borrowed article is considered to be with him. However, according to R. Jose, who holds that in such a case the cow must be returned to its first owner—now, if after the woman has married, her husband uses the cow and it breaks, what is he considered, a hirer who must pay, or a borrower who is not responsible for an accident in the presence of its owner? Said Rabha: The husband is considered neither a borrower nor a hirer, but (a buyer of the estate of his wife), as said in the First Gate, p. 197.

The schoolmen propounded a question: If the body of the animal becomes lean because of the labor, how is the law? Said one of the rabbis, named R. Hylqia b. R. Ovia: As the schoolmen questioned in case of leanness and not in case of death, they must be sure that in the latter case one is surely responsible. Why, then, has he borrowed it, to put it under a canopy? Said R. Rabha: Not only if it become lean, but even if it dies while laboring, there is no responsibility, for the reasons said above by R. Hylqia.

There was a man who borrowed an axe from his neighbor and it broke, and he came before Rabh, who told him to bring witnesses that he used it as an axe is usually used, and then he would acquit him. (Questioned the Gemara:) But how is it when there are no witnesses? Come and hear! There was one who borrowed an axe and it broke, and Rabh had decided that he must buy him another one. Said R. Kahana and R. Assi to Rabh: "Does the law prescribe so?" Is it not stated (in First Gate, p. 100) that the defendant has only to pay the damage, but not to buy another? And Rabh kept silence. The Halakha, therefore, prevails in accordance with R. Kahana and R. Assi, that he must return the broken one and must give the difference in money.

There was one who borrowed a pitcher and it broke, and R. Papa told him to bring witnesses that he used it as a pitcher is usually used, and he would acquit him. There was a man who borrowed a cat, which had overeaten itself with mice and died, and R. Ashi, before whom the case was brought, was deliberating (whether this is considered a case in which it dies while laboring or not). Said R. Mordecai to him: "So said Abimi

of Hagrunita, that a man whom a woman has killed must not be taken into consideration." \*

Rabha said: "If one wants to borrow something from his neighbor, and so that he shall not be held responsible if it be damaged, he may say to the borrower: You may give me water to drink (*i.e.*, that the giving of water will be considered a labor, so that he borrowed the article with its owner). However, if the lender is clever, he may say to him: First borrow what you need, and afterwards I will give you the water."

Said Rabha: A teacher who teaches infants, a planter, a butcher, a barber, and the scribe of the city—all these, when they do their work, are considered, in case one borrows an article from them, as if he has borrowed also the owner of it.

Said the rabbis of Rabha's college to Rabha: "According to your theory you, master, are borrowed to us" (*i.e.*, that if we were to borrow something from you and should spoil it we should be free from payment). And Rabha became angry, saying: "You want to benefit yourselves with my money? On the contrary, you, as my disciples, are borrowed to me, since I have the right to engage you in any tract of the Talmud I like, and you have no right to prevent me or refuse to study what I explain to you." (Says the Gemara: In reality it is not so.) In the days before the festivals he is borrowed to them, as then he must teach the laws of the coming festivals; they (the disciples), however, are borrowed to him on all other days

It happened that Maraimar b. Hanina hired mules from Huzai, and the former overworked them and they died; Rabha made him responsible. Said the rabbis to Rabha: "Was it not a neglect in the presence of the owner, and Huzai used to support them in their work? Rabha was embarrassed; finally it was learned that Huzai was not supporting them in their labor, but, on the contrary, was there to see that they were not overloaded. (Consequently Rabha was right in his decision.) This is correct in accordance with him who holds that a neglect in the presence of the owner is to be freed, but there is one who holds that in such a case the borrower is not free. Why, then, the embarrassment? (He may have agreed with the latter.) The case was that the mules were stolen, and died in the house of the thief; and when Rabha made him responsible the rabbis

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\* This is an ancient parable, and it means that such carelessness must not be considered.

questioned him: "Was it not stolen in the presence of the owner? Why, then, should Maraimar be responsible for the theft?" And therefore Rabha was embarrassed. Finally, it was learned that Huzai came only to see that they should not be overloaded.

**MISHNA II.**: If one borrowed a cow for a half a day, and for the other half a day he hires it, or he borrows it for to-day and hires it for to-morrow, or there were two of them, one of which he borrowed and the other he hired, and it dies, the lender claims that it dies in the time for which it was borrowed, and the borrower says, "I don't know," then the latter is responsible. If the reverse, the hirer says: "It dies while laboring when it was hired," and the owner says, "I don't know," then the former is free. If, however, they contradict each other, and one says that it died while borrowed, and the other says it died while hired, then the hirer has to take an oath that it is as he said, and he is acquitted. But if both say they don't know how the case was, then the damage is divided.

**GEMARA**: From this statement it is to be understood that if one claims a mana, and the defendant says, "I don't know," he must pay. Shall we assume this should be an objection, as it was taught that R. Na'hman and R. Johanan hold the defendant free in such a case? R. Huna and R. Jehudah hold him responsible (the reason of R. Na'hman's statement is, as R. Ashi explains, because the plaintiff cannot collect any money without evidence; and therefore the money remains with the defendant, in accordance with the law of hazakah). Nay; as R. Na'hman said elsewhere that this is only in case the defendant has to take an oath (the illustration will follow further on). The same can be explained in the case in our Mishna. How was the case? Rabha illustrates it thus: If one claims a mana, and the defendant says, "I am sure of fifty zuz, but not of a hundred," then as he cannot take an oath he must pay. However, in the cases brought in our Mishna, such a case can be found in the first part, when there were two cows. The plaintiff claims, "I have forwarded to you two cows for one day, a half of it as a loan and the other half as a hire, or for two days, one day as a loan and the other as a hire," and both die in the time for which they were borrowed. The defendant claims, "I am sure that one of them died in the time of borrowing, but I am not sure of the other one," and as he cannot swear, he must pay. The second part is to be explained that there were three cows, and the

plaintiff claims that two of them died in the time for which they were borrowed. The defendant claims that he is sure only of one of them, and as to the others, he does not know whether that which was borrowed died, and that which is still alive is the one which was hired, or *vice versa*. As he cannot swear, he must pay. And according to Rami bar Hama, who holds that all the four kinds of bailees are liable only when they admit a part and deny a part, the first part of the Mishna is to be explained that the claim was for three cows for half a day, or a day as a loan and the other as a hire; and the plaintiff claims that all the three died at the time when they were borrowed. The defendant, however, denies one of them altogether, and for the remainder he claims that only one of them died in the time for which it was borrowed, and concerning the other, he is doubtful; and in the second part the plaintiff claims that he has given him four cows: three of them as a loan and the one as a hire, and the three which were borrowed died. The defendant denies one altogether, and admits that one died in the time for which it was borrowed, and as to the remainder he is doubtful. As he cannot take an oath, he must pay.

*One says it died while borrowed, etc.* But why? In the claim of the defendant we do not see any admission, even in part, as to the claim of the plaintiff (since the plaintiff claims that that which was borrowed died, and the defendant says that it is still alive, but that the other which was hired is dead; consequently he is not obliged to take an oath at all. Said Ula: As the defendant must take an oath that the cow in question died a natural death, the plaintiff may desire that in that oath shall be included a statement that the hired cow, and not the borrowed one, died (such a desire must be listened to, as it is explained elsewhere that this is a biblical law).

*But if both say they don't know, etc.* This statement is in accordance with Symachos, who holds that doubtful money must always be divided.

**MISHNA III.** : If one has borrowed a cow, and the owner sends it to him by his son, slave, or messenger, or even by the same persons of the borrower, and it dies while on the road, the borrower is free. If, however, the borrower orders him to send it through his son, slave, or messenger, or even through the same persons of the owner, or even if the owner says to him, "I will send it through the persons mentioned above, of my own or of yours," and the borrower says, "Do so," then the

borrower is responsible for the death while on the road, and the same is the case with the return.

GEMARA: Was it not said above that the hand of a slave is considered as the owner's? Why, then, should the borrower be responsible if it was sent with the slave of the owner? Said Samuel: It treats of a Jewish bondman, whose body does not belong to the owner. Rabh, however, said: The Mishna can be explained that it treats even of a heathen bondman; but the order of the borrower is to be considered, as if he would say: Strike it with a stick and it will come to me.\* As the borrower told him to send it in that manner, his intention was that as soon as he shall forward it to the above-mentioned persons, the control of the owner ceases.

An objection was raised from the following: If one borrows a cow and it was sent to him with the son of the owner, or with his messenger (with the consent of the borrower), the borrower is responsible for an accident on the road. If, however, it was sent by his slave, he is free. Now this would be correct in accordance with Samuel's theory, as the Boraitha may treat of a heathen slave, and our Mishna of a Jewish one; but according to Rabh's theory it contradicts? Say, then, Rabh explained the case of the Mishna, that the borrower is not as explained above, "it is considered," but Rabh says that the Mishna treats of which it was said plainly, "Strike it with a stick and it will come to me." As it was taught: "Lend me your cow. Through whom shall I send it to you? Strike it with a stick and it will come." Said R. Na'hman in the name of Rabba bar Abuhu, quoting Rabh: As soon as it was out of the control of the owner the borrower is responsible for an accident.

There is a Boraitha which states plainly, as it is above, in the name of Rabh. Shall we assume that it shall be a support to him? Said R. Ashi: Nay; as the Boraitha may treat in case that the courtyard of the borrower was behind that of the owner, so that the borrower was sure that if the owner would strike the animal with a stick, while turning it to the yard of the borrower, it will come to it (but not otherwise). But is not such a case self-evident? The case was that there was another corner in

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\* His reason is that the slave who was appointed for this message is to be considered hired, as his master has a right to hire him out, and therefore it is as if he hired out two cows. And the statement above, that the hand of the slave is considered as that of his master's, holds good only when the master himself lends or hires. Then the slave may substitute for him, but not otherwise.

the yard of the owner, and the animal could turn there while running. Lest one say that in such a case the borrower was not sure, it is necessary to teach us that he was.

R. Huna said: "If one borrows a hatchet, if he has done some work with it he acquires title to it for the time borrowed, but not otherwise." (According to his theory drawing does not give title to a bailee.) To what purpose was this stated? Did he mean to say that he is not responsible for an accident? Why should this case be different from the case of the cow mentioned above? He meant to say that the owner has the right to retract as long as the borrower has not used it, but not after he has. And he differs with R. Elazar, who said that at the same time the enactment of drawing was made concerning buyers, it was also enacted concerning bailees, and so also we have learned in a Boraitha, with the addition that as real estate may be bought with money, with a note, and with hazakah, the same is the case with hiring. With hiring! What has a note and a hazakah to do with hiring? Said R. Hisda: When real estate is hired (*e.g.*, if one hires a house, if he has paid the rent, or has given a note, or taken possession, hazakah, of it) the owner has no right to retract.

Samuel said: If one steals a bunch of pressed dates, which contains fifty dates—and usually when they are sold together a bunch contains only forty-nine, but if single he sells out the whole fifty—then, when the robber repents and wants to make amends, if the dates belong to a common man he has to repay only for forty-nine, but if they belong to the sanctuary, he must repay fifty, with the addition of a fifth part. However, if one spoils the same, he is free from the additional fifth part; as the master said elsewhere: It is written [Lev. xxii. 14]: "If a man eat a holy thing unwittingly," etc.; it excludes if he spoiled it.

R. Bibi bar Abye opposed: Why shall he pay to a common man only forty-nine? Let the owner say: I would sell them singly. Said R. Huna bar Jehoshua: There is a Mishna (in the First Gate, p. 131): "It is appraised at how much the measure of the land required for planting a saah was worth before, and how much it is worth after."

Hence we do not appraise the value of that which was consumed, but of that which was diminished. Shall we assume that Samuel holds that the law concerning an ordinary man is not equal to that of the sanctuary? Are we not aware that elsewhere R. Abuhu, in the name of Samuel, declares that there

is no difference? Samuel had retracted that statement. But how do you know that Samuel retracted from *that* statement? Perhaps he had retracted from *this* statement. We are aware of this from Rabha's following statement: "That if some one took something from the sanctuary unintentionally or by an error, he transgresses, as if he did the same from an ordinary man intentionally." (Hence we see that there is a difference between a sanctuary and ordinary goods, and Rabha would not teach such a law if it were against Samuel.) Rabha said: Carriers who break a barrel of wine, the price of which on a market day is five zuz and on an ordinary one four, on the market day they have to return another barrel of wine, but on another they have to pay in cash four zuz. This, however, is said if the wine dealer has no other wine for sale. But if he has other wine, and he does not sell it, they may return him a barrel of wine, as we see that he intends to keep the wine for the season; and also in case they pay him, he has to deduct the money for their labor, and also what he has to pay for making a hole in the barrel (which was of clay).

MISHNA IV.: If one exchanged an ass for a cow, and it brought forth young ones, or one has sold one's female slave and she gives birth, and the seller claims that this happened before the sale, and the buyer thereafter, the value of it is to be divided. If one possesses two male slaves, a large one and a small one, or two fields, one large and one small, and the buyer claims, I bought the large one, and the seller, I doubt it, the buyer's is to be considered. If the seller claims: I sold the small one, and the buyer doubts it, the claim of the seller must be considered. If, however, they contradict each other, the seller must take an oath that he has sold the smaller one; if both doubt it, the difference is to be divided.

GEMARA: Why should it be divided? Let us see who possesses it. It should be the obligation of the plaintiff to bring evidence. Said R. Hyya bar Abba in the name of Samuel: The Mishna says: When the articles in question are still in the *semita* (a corner near a public thoroughfare where articles for sale are placed). But why should it not be considered still under the control of the owner, and the buyer the plaintiff who should have to bring evidence? The Mishna is in accordance with Symachos, who said that doubtful money ought to be divided without a note. But was Symachos's decision in a case where both claim that they are certain? Symachos's decision was

only in cases where both doubted. Said Rabba b. R. Huna: Yea, Symachos made his decision, even in a case where both claim certainty. Rabh, however, said: Symachos's decision was only when both claimed that they are doubtful, but not when both claimed certainty. But the Mishna is to be corrected, that both of them claimed that they were doubtful; and therefore the article in question must be divided. However, the Mishna is correct only with Rabh's correction, because part of it speaks plainly in case both are in doubt. Therefore the first part must also be interpreted in the same way. But according to Rabba bar R. Huna's theory, who says that Symachos's decision was even when both claim certainty, the last part would be entirely superfluous, since even when they claim certainty it is to be divided. Is it so much the more when both claim doubt? Nay; this cannot affect, as it may be said that the last part was taught only to make clear the meaning of the first part; lest one say that it speaks only when they both claim doubt. Therefore it teaches plainly the claims of doubt in the last part to signify that the first part speaks when both claims were of certainty, and nevertheless it must be divided. An objection was raised from the decision in our Mishna that the seller must take an oath that he has sold the smaller one, and this is correct only in accordance with Rabha, who says that Symachos's decision does not apply to a case of certainty. But, according to Rabba bar R. Huna's theory, it does. Why, then, should he take an oath; let them divide?

Symachos admits that in such a case where the oath is to be taken biblically, the law that it should be divided does not exist, as will be explained further on.

*If one possesses two slaves, etc.* What has an oath to do here? In the claim of the defendant we do not see any admission at all, as the plaintiff claims that he sold another person, which the defendant does not contradict; and, secondly, the seller says: "Here is your bought article; take it." Such a case is not considered a part admission, as said above; and aside from this there is no rule that no oath must be given concerning slaves. Said Rabh: It treats when he demands the value of the articles sold, but not themselves, as, *e.g.*, the value of the slave or the field in question. Samuel, however, says: The Mishna treats concerning the garments of a slave and the sheaves of a field; the seller claims: I sold you the smaller ones; the buyer says: The larger ones. But then the claims are

not of one and the same article, and the axiom, There is no admission by the defendant, mentioned above, applies also to this. As Rabh Papa declares elsewhere that it speaks not of a ready-made garment, but of the stuff to a garment, which is still attached, and one claims: You have sold me measure for a large garment, and the other says: For a small one, the same is to be explained here.

It was difficult for R. Hoshea to accept this explanation, as the Mishna states a slave, and not a garment. Therefore he tried to explain thus—that the Mishna treats that the plaintiff claims that he sold him a slave with his garments or a field with its sheaves. And to the objection that there is no admission at all to the claim of the plaintiff that he has sold him a garment with the slave, the explanation of R. Papa mentioned above may be used here also, that the dress was attached to the slave (*i.e.*, that he was dressed in it); and as an oath has to be given to him for the dress, the oath about the slave may also be included.

It was difficult for R. Shesheth to accept this explanation, as according to it the main thing the Mishna teaches is that the oath for encumbered estate, for which an oath is not given when the claim is only about it, is nevertheless to be included in the oath given for unencumbered estate; and this is plainly stated in several places elsewhere. This, however, presents no difficulty, since, lest one say that the garment which the slave wears is equal to himself, or the sheaves of the field which are still attached to it are equal to the field, it comes to teach us that it is not so.

*If both doubt it, etc.* This is certainly in accordance with Symachos's theory, who says that doubtful money is to be divided. How, then, is the second part to be explained, which states that if the seller claims that it was born under his control, the seller must swear that so it was? Did not Rabba bar R. Huna declare above that Symachos's theory applies also to the claims of a certainty? Why, then, an oath? Let them divide in this case also. Symachos admits that in such a case, where the oath is to be taken biblically, the law that it should be divided does not exist. As Rabha explained that it treats of a case in which he has cut off a woman's hand, and of a field in which he has dugged pits, excavations, and caves, to which the theory, "Here they are," does not apply, as it is not acceptable. Concerning the admission in

part, it may be considered that her hand is considered a part of her.\*

MISHNA V. : If one sold out his olive trees for fuel, and there were still bad olives on them, the oil of which was less than a quarter of a lug from the measure of a saah, they belong to the buyer. If, however, there was such a quantity or more, the buyer claims it is produced from his trees, and the seller claims it was produced from his estate, the products are to be divided.

Olive trees which were overflowed (by a stream), taken out by the owner, and planted in another's field, and the two quarrel about the fruit borne : one claims, My trees, and the other, My ground brought it. It is to be divided.

GEMARA: Let us see how the case was. If the seller told the buyer to cut it off immediately, and he didn't, then even if there was less than that quantity, it belongs to the seller. If he told him: You can cut it off whenever you like, then, even if it was more, it belongs to the buyer. The case was that he sold it without any stipulation; then less than a quarter of a lug people do not care about. But when more than this, they do. Said R. Simeon b. Paze: The quarter in question must be measured after what is lost in pressing it.

*Olive trees which were overflowed, etc.* Said Ula, in the name of Resh Lakish: The law holds good only when they were torn out with lumps of earth in which they were planted. (In such a case the trees in question are free from the law Arlah; that is, the first three years) and even then only when three years have elapsed from the time he had planted them in the other field. Otherwise the fruit belongs to the owner of the trees; as he may say to the owner of the estate: If you, *e.g.*, would plant new trees you could not use them in the first three years, as they would be Arlah. But why should not the owner of the estate claim: "If I should do as you say, I would use all of them after the lapse of three years, and now you take half of it." Therefore we must accept, as Rabin has reported that Resh Lakish said, thus: The law holds good when they were torn out with the lumps of earth and during the first three years, but after the lapse of three years all of them belong to the owner of the

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\* The text is so complicated that it is very difficult to understand the real meaning of it. The Achri has omitted this from his compendium; the commentaries also have tried to explain this, but did not succeed. However, according to our method we could not omit this, so we did the best we could to translate it.

estate, because of the reason stated above. But why should not the owner of the trees claim: If you should plant it you would not use it for three years, and now you consume half of it every year? Because the owner of the estate may answer: If I were to plant it, they would be small and would not afford much, so that I could use the ground near them for vegetables (which need sunshine), which is not the case now, as you planted your trees in that place.

There is a Boraitha: If the owner of the trees says, "I will take back my plant from your field," he must not be listened to (although after three years it will all belong to the other one), but the owner of the estate has to pay the value of trees for planting, and not the value for fuel. Why so? Said R. Johanan: Because of the occupancy of the land of Israel. Said R. Jeremiah: To such an explanation we need such an authority as R. Johanan.

It was taught: If one has planted trees in a field belonging to another, without the consent of the owner. Said Rabh: His word must be appraised, but not to his benefit (*i.e.*, if the expenses were more than the improvement, he gets nothing, and if the improvement was worth more, then he gets paid for the improvement). Samuel, however, maintains that the appraisal should be as much as one has to pay for planting such a field. And R. Papa said: They (*i.e.*, Rabh and Samuel) do not differ, as one speaks of a field which is better for trees and the other of that which is better for vegetables. And the statement of Rabh was not heard from him plainly, but was so inferred from the following: There was a man who came to Rabh with such a complaint, and he told him to appraise his work. He objected, saying, I do not want my field to be planted at all, and Rabh said: Go and appraise his work, not to his benefit. And the man said: I don't want to do even that, as he spoils my field. Thereafter it was learned that the owner of the field had fenced it, and Rabh said: From this we see that his work satisfies you; go and appraise his work so that he may be benefited.

It was taught: "If one has rebuilt a ruin of one's neighbor without his consent, and to the owner's claim has said: I will take back my wood and stones," R. Na'hman is of the opinion that he must be listened to, and R. Shesheth maintains that he must not. An objection was raised. R. Simeon b. Gamaliel said that in such a case the Beth Shamai hold that he should

be listened to, and the Beth Hillel say not. Shall we assume that R. Na'hman holds in accordance with the Beth Shamai? R. Na'hman holds with the Tana of the following Boraitha: In such a case his claim should be taken into consideration; so is the decree of R. Simeon b. Eliezar. But R. Simeon b. Gamaliel said that so was the decree of the Beth Shamai. The Beth Hillel's verdict, however, is contrary. How, then, should the law be decided? Said R. Jacob in the name of R. Johanan: If this happened with a house, his claim may be considered, but not with a field—for the reason the earth became deficient.

**MISHNA VII.:** If one rents a house (without appointing the time) in the rain season, he has no right to make the tenant move from the Feast of Tabernacles until Passover; and in the summer season for a period of thirty days. In the large cities, however, there is no difference at what time; he must keep him twelve months; and the same is the case with stores or shops at any place. R. Simeon b. Gamaliel maintains that the term of the shops of bakers and dyers is three years.

**GEMARA** (Let us see): In the rain season why must he keep him for the whole season? Because usually when a man rents a house it is for the whole season. Why should not the same be said of the summer season? And if you should say that the reason is that because during the rain season it is not easy to find a house to rent, then how is it that in the large cities the term is fixed for twelve months? Now if the twelve months terminate in the rain season, and the owner makes the tenant move, why it is not easy to find a house for rent? Said R. Jehudah: All the terms are fixed only for giving notice; *i.e.*, thus: If one lends a house to some one anonymously, one cannot make the tenant move from the Feast of Tabernacles until Passover, unless one had given him notice thirty days before. And so, also, we have learned in the following Boraitha: The terms thirty days and twelve months are for giving notice; and this notice is to be given by the owner of the house as well as by the tenant, as the owner may say, If you had given me notice, I should have troubled myself to find a man who would have taken it for the whole season. Said R. Assi: If he has dwelt even only one day in the rain season, the owner loses the right to make him move until Passover. But was not thirty days the term? He means to say if one day of the thirty days in question had passed without any protest of the owner. Said R. Huna: The owner, however, has the right to increase the

rent. Said R. Na'hman to him: This would be if he would hold him (*χεβριος\**) (in his pocket) until the tenant would lose his last garment. (Rejoined R. Huna:) I mean if the rent in general becomes dearer. It is certain, if the house of the owner where he dwells falls, he may make the tenant remove from that house (if the term is at an end) even without a notice before, as he may say, You are not better than myself, as I also cannot so easily find a house, and I was not aware that my house will fall. If the tenant sold out his lease, loaned, or made it a present, the same may be done, as the owner may say, You are not better than the man from whom you took it. If, however, the tenant has given it for the wedding of his son, then it must be investigated; if it was possible for the owner to notify him, he should do so; and if not, he may say, You are not better than myself.

There was a man who bought a lot of wine and couldn't find a place to keep it in, and he asked a certain woman if she had a place for hire; and she said no. Then he betrothed her and she gave him a place. He went home, wrote a divorce, and sent it to her. She then took carriers, paid them with the same wine for taking it out, and put it in the street. When the case was brought before R. Huna b. R. Jehoshua, he said: As he has done, so it was done to him; he was rightly rewarded, and not only from a yard which was not for rent she had the right to do so, but even if it was for rent, as she may say I would like to let it to some one, but not to you, as you are in my estimation equal to a spy.

*R. Simeon b. Gamaliel maintains, etc.* A Boraitha states that the reason is because they usually give very much of their goods in debt to the people in the neighborhood.

MISHNA VII.: The owner of the house is obliged to give to the tenant a door bolt, a lock, and all other things belonging to the house which is to be done by a specialist. However, the things which can be done by any one the tenant has to furnish himself. The manure of the house belongs to the owner; the tenant has a right only to the ashes which he takes out from the ovens.

GEMARA: The rabbis taught: The owner of the house is obliged to put in doors, to open windows, to repair the ceiling,

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\* We have translated according to Schoenhack's Dictionary. Rashi, however, explains it differently, which is not translatable; the meaning, however, is the same.

and to support it with a beam; and the tenant is obliged to make for himself a ladder, a battlement, a gutter, and to plaster the roof with clay.

R. Shesheth was questioned: Whose duty is it to furnish a Mezuzah? \* But did not R. Mesharshia say that the obligation is the tenant's? The question was that if the door-post was of stone, whose is it to furnish a place for the Mezuzah? And R. Shesheth answered thus: We have learned in our Mishna, which states that things which need not a specialist the tenant must prepare; and this is also to be considered among these things as he can fix it himself.

The rabbis taught: The tenant has to buy a Mezuzah, but when he removes he must not take it with him, unless he is aware that a Gentile will occupy the house after him. And it happened that one took it out while removing, and buried his wife and two children.

*The manure belongs to the owner, etc.* How is the case if the cattle were the tenant's? Why, then, should the manure belong to the owner of the house? And if the yard was not rented to him, and the cattle belong to the owner, then it is self-evident that it belongs to him? The court was not rented, and the manure was not of the owner's cattle, but of cattle which were in the court to load or unload things belonging to the tenant. And this statement may be a support to R. Jose bar Hanina, who said that a courtyard acquires title for its owner even without his knowledge. An objection was raised from the following: If one said all articles found in my courtyard to-day, it shall give title to me. He said nothing. Now if the theory of R. Jose is correct, why should his words be disregarded? It speaks of an open court where the articles are not secure. If so, how is to be understood the latter part of the same Boraitha, which states: If, however, there was heard a voice in the city that in the yard of so and so is found an article (Rashi explains this as, *e.g.*, that it was heard in the city that a lame ram happened to come to his field, or that the river overflowed and left some fish in his yard) his word is to be considered. Now, if it speaks of a court where the things are not secure, why should his word be considered, even in this case? If such a thing was heard in the city, one would not dare to take it, and therefore it is considered as if the yard were secured.

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\* The "amulet" for the door-post (Deuteronomy, vi. 9).

Another objection was raised from the following: Ashes of the ovens and dust from the air belong to the tenant, but that from the stable and in the yard belongs to the owner. Now if the theory said above by R. Jose is correct, why should dust of the air belong to the tenant? Is it not the air of the owner's court? Said Rabha: Air which cannot reach the ground because of some obstacle must not be considered as if it were on the ground. But was the decision certain to him? Did not he himself question as follows: If one has renounced his ownership of a purse of money, and has thrown it into one open door, and it passes out through another open door, and falls outside of the house, did the contact of the purse with the air of the house in its passage through give title to the purse to the owner of the house, or, because it has not rested in the house, has the house-owner no title? (Now if he were certain in his above decision, he would not ask such a question?) In the case questioned by him there was no obstacle, as in the case mentioned above.

*That which is in the stable and in the yard, etc.* Why both? Is not one sufficient, as it speaks of a yard which was not rented to the tenant? Said Abye: It means to say that even if the courtyard was rented, still that which is in the stable belongs to the owner. And R. Ashi said: From this it may be inferred that if the yard was rented without any stipulation, the stable in it is not to be considered included.

MISHNA VIII.: If the year was made a leap-year, the tenant reaps the benefit of the intercalation. However, if he rented him the house monthly, the intercalation belongs to the owner. It happened in Ciphorius, that one rented a bath-house for twelve golden dinars a year. The payment should be one dinar monthly, and thereafter the year was made leap intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment of intercalation shall be divided.

GEMARA: Does the Mishna bring a fact to contradict its previous statement? (As there is no mention of a division, but belongs either to one or to the other.) The Mishna is not completed, and should read thus: If he has rented it to him for twelve months to be paid monthly, then the payment for the added month is to be divided, and it happened also in Ciphorius, etc.

Said Rabh: If I were there I would decide that this month belongs altogether to the owner. What was the intention of Rabh to teach us? That the last expression must be consid-

ered. Has he not taught the same elsewhere; namely, R. Huna said that in the school of Rabh it was taught that if one says I sell you this article for an istera (hundred mahas), then he has to pay him a hundred mahas in good money, and if *vice versa* he may give him an istera? (The difference between an istera and a hundred mahas is that an istera contains also a hundred mahas, but not in current money.) From that statement we can infer nothing, as one may say that the last expression was only an explanation to the preceding one. (In our case, however, there is no explanation. The owner rented the tenant the house for a year for twelve golden dinars. The payment should be a dinar monthly; consequently it was two conditions, and not an explanation.) Samuel, however, said: The decision was so made because they came to the court in the middle of the month, but if they had appeared in the beginning it would be entirely the owner's; and if they would come in the end of the month, it would be the renter's (because they doubted as to which expression should be considered, the first or the last; and if they came in the beginning of the month, and he required payment or removal, then his claim is to be considered, since the house is his. And if they came at the end of the month, there is no claim for removal, but for the past month. Such a debt cannot be collected by the court, and therefore the money remains with the renter. But if they came in the middle of the month, and the owner demands payment or removal, he is to be paid for the future, but not for the time past.

But did not Samuel also hold that the last expression must be considered? Is it not stated elsewhere: If one said, I sell you a kur of wheat for thirty saahs, the seller may retract even at the last saah, because the buyer does not acquire title until he has taken the last one (and he had sold him the whole kur and not every saah separately). If, however, the seller said, I sell you a kur for thirty saahs, each saah for a saah, then he cannot retract from that which was already measured (as the last expression, one saah for a saah, is the one taken into consideration). So said both Rabh and Samuel. (Hence we see that Samuel also agrees to the theory of the last expression.) Nay, the reason in that case was, because he took possession of it already, and in our case also for the same reason that it is doubtful, whether the first or the last expression is to be considered. He does not pay for the time occupied, but for the future. R. Na'hman, however, maintains that the estate is

always considered in the occupancy of the owner, and therefore there is no difference at what time in the month they came to the court. His rent must be paid; and not only when the last expression was a *salah* a month, but even if it was the reverse, a "*salah* a month, twelve for a year."

R. Janai was questioned: If the renter says I have paid, and the owner claims I have not received it, who of them must bring evidence? (Let us see.) The following Mishna (Tract B'khorad) answers this question: Either it was for time past or for the present, namely: If the father dies within thirty days of his first-born son's birth, he must be considered unredeemed as yet (*i.e.*, when he is grown up, then the obligation of redeeming would remain to him all his life). If, however, his father dies after thirty days, he is to be considered redeemed, unless neighbors assure him that he was not. (From which it is inferred that within the time the renter must bring evidence, and after the time the owner must bring evidence, as according to the Jewish law rent is paid at the end of the month.) The question was, at the very same day when the term is ended, the renter says I paid you in the morning, and the owner says you did not. Said R. Johanan to them: This we have learned in the following Mishna: A laborer who claims in the last day of his employment, that he did not receive as yet his salary has to take an oath and collect the money. And that the laborer must take an oath and not the employer is enacted by the rabbis only there; as the employer has to deal with many laborers, it may happen that he has given to another one instead, and then he will swear falsely; but in your case the renter is trusted, if he takes an oath that he has paid.

Rabha in the name of R. Na'hman said: If one has rented out a house for ten years, and has signed a lease without a date, and thereafter he claimed that the tenant has already had the house for five years, he is to be trusted. Said R. A'ha of Difti to Rabina: According to this theory, if one has loaned a hundred zuz and has taken a note, should the debtor also be trusted if he says, I have paid you the half? And he answered: What a comparison is this? A note is written for collection; and if he would pay, he would insist that it should be written on the note or he would take receipt. In this case, however, the owner may claim that he has made the lease, so that the tenant shall not be able afterwards to claim *hazaka* (occupancy).

R. Na'hman said: If one borrows at his neighbor's an article

for the time it may be fit for work, he may take it as often as he requires it as long as it exists. Said R. Mari, the son of Samuel's daughter: This holds good only if it was done with the ceremony of a sudarium. And R. Mari b. R. Ashi said: That in case it breaks, he is obliged to return him the pieces, as it was only borrowed, but not sold.

Rabha said: If one borrows a hoe to dig this vineyard, he may dig with it the whole vineyard. If he says *a* vineyard, it may be any vineyard he likes, and if he says *vineyards*, then he may dig as many as he possesses, and if it breaks he must return the pieces.

R. Papa said: If one says lend me this well, and it becomes ruined, the borrower has no right to rebuild it. If, however, he said *a* well, if it becomes spoilt, the borrower may rebuild it. If, however, he said to him, Allow me your estate to dig a well, he may dig at any place in it until he finds water. However, all this holds good only with the ceremony of a sudarium.

MISHNA IX.: If a man rents out a house and it falls he must build another house in the same condition as the first was; if it was a small one, he must not build it larger, and *vice versa*. If it was two houses he must not make one, and *vice versa*; he must not increase or decrease the number of windows, unless the renter agrees.

GEMARA (How was the case): If the owner rented him *this house*, then why should he build another one when it falls; and if he rented him anonymously a house, then why can he not make any change in the building, *e.g.*, two or one, or a large instead of a small? When Rabin came from Palestine he said, in the name of Resh Lakish, that the Mishna treats: When the owner said to the tenant, I rent out to you a house like this. If so, what does the Mishna teach us? Is this not self-evident? The case was if the house was standing on a shore of a river, and lest one say, that it means a house which is placed in the same position, therefore the statement of the Mishna.

## CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE HIRING OF FIELDS ; PAYMENT OUT OF THEIR PRODUCTS OR IN MONEY ; THE NEGLECT OF THE HIRER ; WHAT HE MAY OR MAY NOT SOW IN THEM.

**MISHNA I. :** If one hires a field (no matter under what condition, for a half, third, or a quarter, or for so and so many kurs a year) he must do as it is customary in that country: to scythe, to turn it out, or to plough, to weed after them. (When they come to divide) the grain, they have also to divide the hay and straw. If the stipulation was made on wine, then they divide the vine and sticks. They must also prepare together the sticks needed for the vineyard for the next year.

**GEMARA:** There is a Boraitha: If the custom was to scythe, he must not tear out, as the owner of the estate may say it is better for me that some of the straw remains, which will serve me to prepare manure next year. Or if the custom was to tear it out, he must not scythe, although one might say I would like the garden to be clean, and the other says, I would like to have the straw of it, and the reason is because each of them has a right to prevent the other.

*To weed after them he may.* Is not this self-evident? The case was in such a place where the custom was not to weed, and he, however, did so while still growing, saying, I do so now in order that I shall not have to do it after the grain is taken off. It teaches us that such a stipulation is not to be considered.

*All must be done according, etc.* What does it mean to include in the word "all"? That what the rabbis taught: Where it was customary to let the trees with the earth he may do so, and in the places where it is not customary he must not do so. Is this not self-evident? The case was in places where it was customary to let it for a third of the products, and he let it for a quarter, lest one say that the owner may say, I have reduced the price for the purpose of saving the trees for myself. It comes to teach us that this cannot be done unless so stipulated.

*Where it is customary not to let it, etc.* Is this not self-evi-

dent? The case was in places where it was customary to let for a quarter, and he took it for a third, lest one say that the hirer may claim, I have increased the price for the purpose that you should give it to me with the trees. It comes to teach us that this cannot be done unless so stipulated.

R. Joseph said: In Babylonia there is a custom that the gardener is not given any straw. To what purpose does he say this? Because if it happened that some are doing so, it shall not be considered as a custom, but attributed to their goodness. The same said again: The first earth upon the trench, the second, and the third, and also the sticks for the thorns must be furnished by the owner; the thorns themselves, however, by the gardener. This is the rule. All things which are considered the most necessary for preserving the garden must be furnished by the owner, but extraordinary things by the gardener. (As this benefits him only as this saves him time and trouble.) He said again: The hoe, the dung-fork, the pail, and the bag for water is to be furnished by the owner; the gardener, however, has to dig the channels for water.

*As they divide the wine, etc.* What have sticks to do here? In the school of R. Janai it was said, *i.e.*: The peeled sticks on which the vine is usually supported.

*They must also, etc.* Wherefore this addition? This corresponds to the former, and it means thus: Why should the sticks be divided? Because the preparation of them is to be done by both.

MISHNA II.: If one hires a field and it was a dry place (so that it has to be artificially watered), or a group of trees and thereafter the spring ceased to flow, or the trees were cut off, the hirer has no right to deduct from the price stipulated. If, however, at the time hired the hirer said to him: Rent me *this* dry field, or this field in which there are a group of trees, and it happened that the spring dried up or the trees were cut off, the right of deduction is granted.

GEMARA: How was the case? If the general river from which all water their fields become dry, why then shall nothing be deducted from the agreement; let him claim that this is a plague to the whole country (further on it is taught that in such a case the hirer may deduct)? Said R. Papa: *I.e.*, that the channel from the river to the field only became dry, and then the owner of the field may say, you could water it by means of pails. R. Papa said again: The statement of the two Mish-

nayoths applies to both cases, either he took it in partnership for half or third of the product, or he hires for a certain amount of kurs. The statement of the following Mishnayoths of this chapter, however, are different, as the law which applies to an undertaking for half of the products does not apply to a hiring and *vice versa*, as it will be explained further on.

*If the hirer said to him: Rent me this dry field, etc.* But why? Let him say, I only gave you the name without any particular intention; have we not learned in the following Boraitha that if one says, I sell you the estate which contains a kur of earth, and there is no more than a half, or, I sell you a vineyard and there are no vines, or, I sell you a fruit-yard, and there are nothing but pomegranates, all these sales are valid as they are so called. And the same should be the case here. Said Samuel: This presents no difficulty, as in all cases of the Boraitha the owner says it to the buyer, therefore the name is considered. From the case stated in our Mishna, however, we see that he wanted that particular field upon which he was then standing, as he said *this*. Rabina, however, said: It does not matter who says so, the case in the Mishna is different, because in spite of the fact that he mentions *this*, of which it is to be inferred that he was standing upon, he nevertheless mentioned dry field also, which shows that only that particular dry field suits him, because of the circumstances.

MISHNA III.: If one has undertaken to work up a field, and he has neglected to do so, it must be appraised at how much it would produce if worked, and the defaulter has to pay, as it is customary for an agreement to be so written, that should it be neglected, I will pay from my best estate.

GEMARA: R. Mair, R. Jehuda, Hillel the first, R. Jehoshua b. Kar'ha, and R. Jose, all these considered the language of the common people legal (although it was not in accordance with the enactment of the sages); R. Mair, in the last sentence in our Mishna, which is stated in his name elsewhere, R. Jehudah in the following Boraitha: One has to bring the offer that is prescribed for the present of a rich man to his wife. (The difference between the offering of rich and poor is explained in Lev. xiv. 21.) Because in the marriage contract he writes: I will take upon myself all the responsibility you have had before our marriage—*i.e.*, from the time he marries her he takes upon himself to make good all her obligations to

the sanctuary, even those contracted before marriage.\* Hillel the first in the following Boraitha: The inhabitants of Alexandria used to betroth their wives, but at the time they were prepared to go under the canopy (Chupha) other people used to come and take them away; and the sages were about to proclaim their children bastards. Said Hillel the first to them: Bring me the marriage contract; and finding that it is written there: You shall be my wife when you enter the canopy, therefore the children were not proclaimed such. R. Jehoshua b. Kar'ha in the following Boraitha: If one lends money to some one, he has no right to pledge him through the court for more than he owes him, as is written in the agreement: You may pledge me for all I owe you. [Was this, indeed, because of the written agreement? Did not R. Johanan say: If one has pledged his debtor, and thereafter he has returned him his pledge for a short time, and meanwhile the debtor dies, the lender has a right to take it away from his heirs? (Hence we see that even without an agreement the lender acquires title to the pledge.) The agreement benefited the lender, in case the debtor has used the pledge and diminished its value, to collect it from their other estate.] R. Jose in the following Boraitha: In the places where it was customary to consider the dowry prescribed by the father of the bride, as a loan, the husband has a right, in case the marriage contract was not fulfilled to collect it from his father-in-law as a creditor. In the places, however, where it was customary to write in the marriage contract to double the amount, the husband collects the half. The inhabitants of Nahardai used to collect only the third of the amount written. Maremar, however, used to collect the whole amount. Said Rabina to him: Have you not learned where it is customary to write double he collects the half only? This presents no difficulty, as the cited Boraitha treats when it was not made with the ceremony of a sudarium, and Maremar treats when it was.

Rabina used to double the amount in the marriage contract, and when asked to strengthen this with the ceremony of a sudarium, he would say: One of the two, either a sudarium or

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\* We have translated this from the text, and according to the commentary of Thosphath. Rashi, however, says that he could not explain this paragraph, and, therefore, he brings another text of *Thorath Kohanim*, which is exactly the contrary to this text. It is remarkable, however, that in the Tract Yebamoth, 35 B., where the same is brought, Rashi explains it exactly as Thosphath did, without any remark, and Thosphath brings the text which Rashi used here.

the double amount. There was one who said when on his dying bed: Give four hundred zuz to my daughter in her marriage contract, and R. A'ha b. R. Ivia questioned R. Ashi: Does he mean to give four hundred in cash, so that the marriage contract should be written eight hundred; or does he mean that it should be so written in the contract, which in reality means only two hundred? It must be investigated how he expressed himself. If he said, Give her four hundred to her marriage, then it is evident that he meant cash, and it must be written eight hundred; but if he said, Give her in the *marriage* contract four hundred, it means only two hundred. (Said the Gemara:) In reality it is not so. There is no difference if he said to her marriage, or in her marriage contract, it must be considered that he intended two hundred, unless he said give her four hundred without any addition.

There was one who undertook to work up a field, and he said: Should I neglect I will give you one thousand zuz. Finally he neglected to work up a third of it, and the sage of Nahardai decided he shall pay him  $333\frac{1}{3}$  zuz. Rabha, however, said the whole thing was only an *asmakhta*, which gives no title. But why should this be different from that which is stated in our Mishna: If it will be neglected I shall pay with my best estate? In the Mishna there was no exaggeration; here, however, when he said he will give a thousand it was merely an exaggeration.

There was another man who undertook to work up a field for poppy and had sowed it with wheat. The wheat, however, became dear, so that the price was equal to poppy (so that the owner of the estate suffered no loss). R. Kahna, nevertheless, was about to deduct from the agreement the value of the fertility which was used less for wheat than it should have needed for poppy. Said R. Ashi to R. Kahna: People say it is better for one that his earth should become meagre than he himself.

There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy, and Rabina was about to say that the hirer shall take the value of the increase. Said R. A'ha of Difti to him: Was the increase from the grain only; was it not also from the fertility of the earth? The sages of the Nahardai said: If one takes an article to sell in places where it is dearer, for the half profit, the enactment of the sages was that half shall be considered a loan and the other half a deposit; and they did so to benefit both. The borrower is benefited, as he has the right to use the half for his

own expenses, and the lender, because the half, which is considered a deposit, collects it from his heirs in case he dies, as it becomes no personal property of theirs. This is in accordance with R. Ida bar Rabin.

Rabha, however, said: It is therefore called business that first one must not use it for himself; and, secondly, that if he dies it should not be considered personal property of his heirs.

Rabha said: If one has given articles for business without any stipulation (the law of which is that the owner takes three-quarters of the profit, and suffers half if damage occurs), and took from him two notes, *e.g.*, if he sold him two bundles of goods for two hundred zuz, and took a note for each of them for a hundred zuz, and the borrower had sold out one bundle for one hundred and thirty zuz and the other for seventy, then if there were only one note, it would be considered no profit nor loss. But now, as there are two, to one there is a profit of thirty zuz, of which the lender takes two-thirds or twenty, and the other one is considered thirty zuz loss, of which the lender suffers half. If, however, it is the reverse (*i.e.*, he took two loans in two days on one note), then in such a case as stated above, the borrower suffers (five zuz), not the lender. He said again: If one took money for business, and has had a loss, and thereafter he exerts himself and regains the loss, but failed to notify the lender both of the gain and the loss, he cannot claim that the lender shall suffer any loss, because the lender may say to him: You have exerted yourself for your own benefit to regain it, that people shall not say that you are a poor business man. The same said again: If two persons took money from one lender for business, they shall do it together, and one of them profits and wants to separate himself from his partner, he has no right to do so if his partner protests and says: Let us be partners until the time appointed for returning the money. And if one claims: I would take half the profit for my share, the other may prevent him, saying he cannot take out the profit because of the possibility of future loss. And even if one of the partners claims the half profit and half of the principal amount, the other can prevent him by saying: We cannot divide, as the whole money belongs to the business. And if he promised his partner that in case of loss he shall suffer his share, his partner can prevent him by saying that the fate of two is better than of one.

MISHNA IV.: If the gardener did not want to weed the field, saying: I will give you your due, he must not be listened

to, as the owner may claim, To-morrow you will leave this field, and I will have to weed it myself.

GEMARA: And even if the gardener says: I will weed it afterwards, the owner may say: I want good wheat, and if it is not weeded the wheat cannot be as good as when weeded. And if he says: I will buy you good wheat from the market, he may say: No, I want the wheat from my estate, and even if he claim: I will weed out that share of it which belongs to you only, he may say that by doing so you will spoil the reputation of my field. But did not the Mishna give only one reason, *that I will have to weed it, etc.*? All these claims are included in the one reason given by the Mishna, that finally he will have to weed it. (The statements of this Mishna apply only to a hirer, but not to one who took it in partnership.)

MISHNA V.: If one took a field in partnership, and it was not productive, he must not leave it as long as there is hope of bearing even only one heap. R. Jehudah says that there is no appraisement as to the contents of a heap, he therefore maintains that he must not leave it if there is hope of the products being at least as much as was sowed.

GEMARA: The rabbis taught: If one took a field in partnership and it was not productive, if there is grain sufficient to make one heap, he is obliged to work it up; as the usual written agreement of such a partnership is as follows: I will plough, sow, weed, make sheaves, thresh, blow, and will make a heap of it for you, and then you will take half and I for my labor the other half. What should be the quantity of the heap? To cover the winnow—*i.e.*, that if put in it should be completely covered.

The schoolmen propounded a question: How is it if both edges of the winnow are still visible? Come and hear. R. Abuhu said: R. Jose bar Hanini explained to me, when the right side of the winnow cannot see the sun. It was taught: That quantity of the heap is three saahs according to Levi, and according to the disciples of R. Janai two. Said Resh Lakish the saahs in question must remain after it was cleaned out.

But how much is it? Said R. Ami in the name of R. Johanan, four saahs for one kur, and R. Ami himself maintains eight for a kur. There was a certain old man who said to R. Huna b. Rabba bar Abuhu: I will explain to you the reason of their statements. In the year of R. Johanan the earth was fertile, and four for a kur was sufficient, but in years of R. Ami

the earth was already meagre. There is a Mishna (Peah XV.): If the wind has spread the sheaves it must be appraised how much gathering for the poor there would be if this had not occurred. R. Simeon b. Gamaliel said: He may give to the poor as much as was sowed, and what a quantity does he mean? When R. Dimi came from Palestine he said: In the name of R. Eliezar or R. Johanan four kabs to a kur.

R. Jeremiah questioned, Is it meant for a kur seed (*i.e.*, for a kur sown in the field), or for the field where a kur grain can be gathered; and if you should mean for a kur seed, there is still a question whether it means for sowing by hand or with oxen? (As to the last one the quantity is larger.) Come and hear. When Rabin came he said in the name of R. Abuhu, quoting R. Eliezar or R. Johanan, four kabs for a kur seed; the question, however, whether with hands or oxen remains undecided.

**MISHNA VI.** : If one hires a field, and the locusts destroyed it or it was burned, if this was a general plague in the country he may deduct from the agreement, but not otherwise. R. Jehuda, however, maintains that if he has hired it for money, he must deduct under any circumstances.

**GEMARA:** What is to be understood by a plague of the country? Said R. Jehudah as, *e.g.*, the majority of the valley, where there were many fields, was destroyed. Ulah, however, said: If four fields, on all its sides.

If the owner had told him to sow it with wheat, and he had sowed it with barley, and the fields of the majority of the valley were destroyed and also his barley, may the owner of the field claim that if he had sowed it with wheat, according to the agreement, it would not have been destroyed, as I have prayed that I should succeed in wheat, not in barley? Common sense dictates that his claim is right. If it happened that all the fields of the landlord were destroyed, and which was hired included, but the majority of the valley was not destroyed, may the hirer claim that since all your estate was destroyed, it is your fate that this field was also destroyed? The landlord, however, claims that if you hadn't hired it some of my field should have been left to me, consequently it is your fate. Common sense dictates that the claim of the landlord is right. If all the estates of the hirer were destroyed, and also the majority of the valley, may the hirer claim that because the majority of the valley was destroyed he has not to pay, or the landlord may

say: As all your estate was destroyed, it was your fate that this was also destroyed? Common sense dictates the claim of the landlord is right. But why should not the hirer claim that if it were my fate something would be left to me, as it is said above concerning above? As the landlord may say that if Providence would favor you, some of your own fields would have been left to you. An objection was raised from the following: If that year was a year of destruction, or a year which was like the years of Elijah (without rain), it must not be counted among the years of redeeming. We see then that he compares a year of destruction to the years of Elijah, when there was no grain at all, but where grain is to be found it is not to be considered a plague of the country.

Said R. Na'hman bar Itz'hak: There it is different, as it is written [Lev. xxv. 15]: "According unto the number of harvest years," etc., which signifies that as long as there is some grain in the country it is called a harvest year.

Said R. Ashi to R. Kahana: According to your theory, let the Sabbatic year be counted, as there is grain out of Palestine where the Sabbatic year is not observed, and he answered: The Sabbatic year is a decree of the king, and must not be considered at all.

Samuel said: The statement of our Mishna applies only when he has sowed it and it was grown, and then the locusts have destroyed it. But if he has not sowed it at all because of the locusts, the hirer is responsible, as the landlord may claim that if you would sow it the verse of Psalm, xxxvii. 19 would apply to me.

There is one Boraitha which states that if this happened once, he has to sow it the second time and also the third, but not if it happened the third time also. And another Boraitha states that he has to sow it even after the third time, but not after the fourth. This presents no difficulty. As one Boraitha is in accordance with Rabbi, who holds that two times is to be considered a hazaka, and the other Boraitha is in accordance with R. Simeon b. Gamaliel, who holds that it must not be considered so unless it happened three times. Resh Lakish said: The Mishna treats: In case it was sown, grown, and then was destroyed by the locusts; but if he has sown and it didn't grow, the owner of the estate may claim he shall sow it again and again, until the sowing time is past. But when is it considered past? Said R. Papa: When the gardeners come from the field in the month Adar.

An objection was raised from the following: R. Simeon b. Gamaliel in the name of R. Mair and also R. Simon b. Mnasia said: That the latter half of Tishri Mar Cheshvan and the first half of Kislev is the time for sowing, the latter half of Kislev Tabet and the half of Shbat is winter; the latter half of Shbat, Adar, and the half of Nisan is cold; the half of Nisan, Iyar, and the half of Sivan is harvest; the latter half of Sivan, Thamuz, and the half of Ab is summer, and the half of Ab, Ellul, and the half of Tishri is heat. (Hence we see that the time of sowing is only until the half of Kislev.) R. Jehudah counts from Tishri. R. Simeon, however, counts from Cheshvan. But even then, who is more lenient? R. Simeon, who counts from Cheshvan, does not even count the sowing-time until Adar. This presents no difficulty. The one speaks of a case when he took the fields for sowing wheat and corn, which are usually sown in the beginning of the winter, and the other speaks of barley and peas, which are usually sown in Adar.

*If he hired for money, etc.* There was one who undertook an estate to sow garlic on the shore of the river of the old king; and it happened that the river was stopped. When the case came before Rabha, he said that it is not usual for this river to be stopped up, and consequently it is therefore considered a plague of the country, and you may deduct. Said the rabbis to him: Have we not learned in our Mishna that R. Jehuda said if he took it for money, he must pay under all circumstances, and he answered: There is no one who cares for his decision.

**MISHNA VII.:** If one hires a field for ten kur wheat per annum, and the products are poor, he may pay him with the same. The same is the case if the wheat was good, he cannot say: I will pay you with the best of the market, but must furnish him with the same.

**GEMARA:** There was a man who took an estate for pastio (pasture; such a field is usually sown many times a year) for one kur of barley. First he used it for pasture, and afterward he sowed barley in it, and the barley was bad. R. Habiba of the city of Sura, on the shores of the Euphrates, then sent a message to Rabina, asking: How should such a case be decided? Is it equal to the statement of our Mishna, which says that he must pay with the products of the estate, or as he hires it for pasture, and uses it for barley, it is different? And Rabina answered: What comparison is this? In the case of the Mishna the earth was sown according to the agreement, and the pay-

ment has to be with its products; but here he has not conformed to the agreement, hence he has to pay him with the good barley of the market.

There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. R. Kahana was about to say that this case is equal to the case stated in the Mishna, that if the field becomes stricken and produces bad barley, he may pay him with its products. Said R. Ashi to him: What comparison is this? In the case of our Mishna the earth failed to give what was expected of it; here, however, the earth did fulfil the expectation, and the *wine* became sour thereafter. However, R. Ashi admits that when the grapes become wormy, and also in case the sheaves of the field became spoilt, that he has to repay him with the same.

MISHNA VIII.: If one takes a field for sowing barley, he must not sow wheat in it; but if for wheat, he may sow barley. R. Simeon b. Gamaliel forbids this: he must not sow peas in that which was taken for grain, but he may sow grain in that taken for peas. R. Simeon b. Gamaliel forbids this also.

GEMARA: Said R. Hisda: The reason of R. Simeon's statement is, because it is written [Zephaniah, iii. 13]: "The remnant of Israel shall not do injustice or speak lies, and there shall not be found in their mouth a deceitful tongue."

An objection was raised from the following: That which was collected for the poor on Purim must be distributed at the same time without any particulars. However, the poor must not buy with the donation a strap for the shoes, unless it was so stipulated by the elders of the city. So is the decree of R. Jacob in the name of R. Mair. R. Simeon b. Gamaliel, however, was lenient (permitting this). Hence we see then that he was lenient in his decision, and in our Mishna, however, he is rigorous. Said Abye: R. Simeon's reason is as my master (Rabba) said: He who likes his earth to bring forth good fruit, should sow in it one year wheat and the other barley; one year in the length and the second in the width. This, however, is the case if he does not sow in time, but if in time it does not matter.

*He must not sow peas, etc.* R. Jehudah taught to Rabin: If for grain, he may sow peas. Said Rabin to him: But did not the Mishna state he must not? And he answered: My statement is not contradictory, as the Mishna speaks of Palestine, which is mountainous, and the leanness of the earth is taken into consideration; and I talk of Babylon, which is

situated in a valley, and there is no fear of this. Said R. Jehudah to Rabin b. Na'hman, Rabin, my brother: Cresses growing among flax may be used without fear that there is robbery (because the owner is benefited by their removal, as they do more harm than good). If, however, they are placed outside of the flax-beds, then it is robbery, and the same is the case even if they grow among the flax, but are already grown up as much as the flax, and so do no more harm. The same said again: Rabin, my brother, in our fields, which are closely attached, there are some among my trees, the branches of which are bent toward yours, and *vice versa*. In such cases, however, the custom is that the fruit belongs to the side to which the branches incline. As it was taught: A tree which stands on the boundary of two estates belonging to two different persons, where the branches are inclined there should the fruit be used. So said Rabh. But Samuel maintains that it is to be divided. An objection was raised from the following: A tree which is placed on the boundary is to be divided, and this contradicts Rabh. In order that the cited Boraitha should not contradict Rabh, Samuel explains that it speaks of a case in which the tree in question occupies the whole boundary; but, then, it is self-evident? It means even when all the branches are inclined to one side. However, even then it is self-evident? Lest one say that then one's neighbor has a right to say: You may take of the fruit of those branches which are inclined to your field, and I will take the remainder, it comes to teach us that our neighbor may say, We must share equally.

The same said again: Rabin, my brother, see that you do not buy an estate close to the city, as R. Abuhu in the name of R. Huna quoting Rabh said: One is not allowed to stand and consider his neighbor's field when the fruit is nearly ripe because of an evil eye. Is that so? Did not R. Abba meet the disciples of Rabh, asking them what has Rabh to say to the following verses [Deut. xxviii. 3-6]? And they answered: Rabh said thus: "Blessed shalt thou be in the city," means your house shall be near the synagogue; and "Blessed shalt thou be in the field," means that your estate should be nearer to thy city; "Blessed shalt thou be at thy coming in," means you shall find your wife and family ready to please you; and "Blessed shalt thou be at thy going out," means that your offsprings shall be equal to you. And R. Abuhu answered: R. Johanan interpreted them differently—namely: "Blessed thou

shalt be in the city," means that the closet of man's necessity shall be near his house [but not a synagogue, as the one who goes further is rewarded for his walk]; "Blessed shalt thou be in the field," means that thy estate shall be thirdered, one third in grain, one in olives, and the other in wine; and "Blessed shalt thou be in thy coming in and in thy going out," means that your departing from this world shall be equal to your entering, as your entering was without any sin, so shall be your departing. (Hence we see that it is a blessing if the estate is near the city?) This presents no difficulties. When it is fenced it is a blessing, but not when it is not.

It is written [Deut. vii. 15]: "And the Lord will take away from thee all sickness." Said Rabh: It means an evil eye. And Rabh is in accordance with his theory, as it happened once that Rabh was at the cemetery, and he did what he did, and said thereafter: I see that ninety-nine of the dead were killed by an evil eye, and only one died a natural death. But Samuel said: All sickness is from the air, and as he said elsewhere, that every sickness and death came from the air. But are there not some who were killed by the government? Also these, if not the air, a medicine could be prepared that would restore them. R. Hanina, however, says that the verse means cold, as it is written [Proverbs, xxii. 5]: "Thorns and snares," etc.,\* from which we infer that everything is in the hands of Heaven but cold. R. Eliezar said, *i. e.*, the gall; and so also have we learned in the following Boraitha: The word *ma'hlah*† means the gall. And why is it called *ma'hlah*? Because it makes sick the whole body of the man. According to others it is called *ma'hlah*, because there are eighty-three kinds of sicknesses to which the cause is only the gall (and the letters of the word *ma'hlah* number eighty-three), and all these sicknesses are abolished by consuming bread with salt and a pitcher of water early in the morning.

The rabbis taught: Thirteen advantages can be gained by taking the early morning meal—namely: prevention from heat, cold, winds, evil spirits, and also the brightening of the fool, the winning of a law-suit (Rashi explains this, that the early meal brightens his mind so that he can explain his case clearly to the court), to learn, to teach, his words are listened to, his

\* The Hebrew term for this is *xiria*, *i. e.*, cold, for which the Talmud takes it; Lesser, however, translates it differently, according to the sense further on.

† The Hebrew term for sickness is "*ma'hlah*."

learning is retained, his flesh does not give too much heat, and he does not lust for a strange woman, and the meal also kills the parasites in the intestines, and according to others it removes jealousy and brings love.

Said Rabba to Rabha bar Mari: Where is it from that people say, Sixty racers cannot reach the man who takes his meal early in the morning; and also the rabbis say, Get up early in the morning and eat, in the summer because of the heat and in the winter because of the cold? And he answered: Because it is written [Isaiah, xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them," etc., which is to be explained that they shall not be smitten by heat and cold, because they were not hungry in the morning. And he rejoined: You infer this from this; I, however, from the following [Ex. xxiii. 25]: "And ye shall serve the Lord your God," means the reading of shemah and praying; "and he will bless thy bread and thy water," means the bread and salt and the pitcher of water taken in the morning; (and this will do that:) "I will remove sickness from the midst of thee."

R. Jehudah said to R. Ada, the land-surveyor: You should be very particular in your business. Bear in mind that every inch of the earth is fit for sowing saffron. And he said again to the same: When you are measuring the trench from the river to the fields, you should not be particular with the four ells near the trench which the owners are forbidden to sow. However, that which remains on the shore for anchoring, do not measure at all, but leave it so that it should be conspicuous enough; and this advice is in accordance with his theory, that the four ells of the trench belong only to those who are benefited by them, but that of the shore belongs to every one.

R. Ami proclaimed: A forest or any other group of trees placed on the shore must be cut off at the width of a shoulder (*i.e.*, to leave space for the towmen of the boats on both sides of the river). R. Nathan b. Hoshea had cut off sixteen ells, and the inhabitants of Mashrunia beat him bloody. He thought sixteen ells were needed for a public thoroughfare. For the towmen, however, is only required sufficient space for the managing of ropes bound to the boat.

Rabba b. R. Huna possessed a forest on the shore of the river, and when he was asked to cut it off, he answered: Let the forests which are before and behind mine be cut off, and then I will cut off mine. But how could he answer so? Is it

not written [Zephaniah, ii. 1]: "Gather yourselves together." And Resh Lakish said: That is, Correct thyself first, and then others? The forests before and behind him belonged to a governor of the Persians, Parzak, and Rabba was aware that he would not care to cut off his, and no one can compel him, consequently the carriers of the boats could not pass anyhow; what, then, would be the use of his cutting? Rabba bar R. Na'hman was sailing in a boat, and had seen a forest on a shore, and to the question, Whose is it? he was told that it was Rabba b. R. Huna's, and he applied to him the verse [Ezra, ix. 2]: "And the hand of the princes and the rulers hath been the first in this trespass," and he then commanded his people to cut it off. (He was not aware of that which was said above.) Rabba b. R. Huna came and found them cutting, and said: Who has cut this, his branches shall be cut off; and it was said that all the years of the existence of Rabba b. R. Huna the children of Rabba b. Na'hman were not preserved.

R. Jehudah said: All the inhabitants, even orphans, of the city must contribute to the repairing of the wall of the city if it is destroyed, but not scholars, as they need no guard (Rashi explains that their wisdom guards them); but if the spring was spoiled the scholars must also contribute (as they also require water). This applies only in the case of contribution of money, but when the contribution means to dig themselves, then the rabbis are to be freed, as it would be a humiliation for them to do this work. He said again: When there is a stop in the river, the people behind it have to contribute to the repairing of it, but not those who live before it; with rain-water, however, it is the reverse. The illustration is in the following Boraitha: If five gardens, one behind the other, which are watered from one spring, and the spring becomes spoiled, all of them are obliged to support the people of the highest one. Hence the very lowest one has to support all those above it; and if it happens that only the entrance of the lowest is spoiled, then the above are not obliged to support it. Reverse is the case with five court-yards which pour their unclean waters to one sewer, and if the channel was spoiled at the last one, all of them must support it (and also all that are above the yard have to support the lower ones, but the highest has to shift for itself).

Samuel said: If one takes possession of a dock he is a rascal, but he cannot be removed by law (Rashi explains this to mean that at the time of the Persians the estate was ownerless, and

he who paid the duty to the government acquired title, as he who took possession of the dock is given title, but this act is considered rascality, as the dock is for loading). Now, however, as the Persians write in their deed: "You may acquire title on this estate as far as the measure of a neck of a horse from the water," if any one takes possession of a dock, he is to be removed.

R. Jehudah in the name of Rabh said: If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance, but he cannot be removed by law. R. Na'hman, however, says that he may be removed also. But if there is no other right than preëmption, he is not to be removed. The N'hardais, however, maintain that even for this he is to be removed, as it is written [Deut. vi. 18]: "And thou shalt do that which is right and good in the eyes of the Lord."

In case the buyer asked advice from the preëmptor, and the latter advised him to buy, is his word sufficient, or must it be done with the ceremony of a sudarium? Rabbina says the sudarium is not necessary, and the N'hardais say it is; and so the Halakha prevails.

Now, as it was concluded that the sudarium is necessary, if it was not done, and the land became greater or less in value, it is considered under the control of the preëmptor, so that the buyer has to pay the prevailing price. If, *e.g.*, he bought it for one hundred and it was worth two hundred, it must be investigated. If the owner has lowered the price for every one, then the preëmptor has to pay him only one hundred, as he could buy it from the owner at the same price; if, however, the price was lowered only for him, then he has to pay the two hundred. If, however, he had bought for two hundred, and it was worth only one hundred, the schoolmen were about to say that the preëmptor may say to the buyer: My message to you was for my benefit not for my loss.\* Said Mar the elder b. R. Hisda to R. Ashi: The N'hardais have declared in the name of R. Na'hman that there is no cheating concerning estates.

If one bought a field which was placed in the centre of others

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\* The Ashri maintains that this claim is not meant that he may give him only one hundred zuz, and the buyer shall lose one hundred, as this would not correspond with the verse cited, "right and good." As if the estate would remain with the buyer it may be he would lose nothing, or to him it was worth double; but this is meant that the sale shall be considered invalid.

it is to be investigated; if this field is distinguished to be the best or the worst of all his other estates then the sale is valid; and if not, it is to be feared that that was craftiness on his part, as he may have bought it for the purpose of claiming the preemption to all fields around him.

To a presented estate the right of preemption does not apply. Amemar, however, maintains that if the donor obliged himself in writing to be responsible for it, this law applies.

If one had sold out all his estate to one buyer preemption cannot be claimed, and the same is the case if he returns his estate to its first owner from whom he bought it. The same is the case with an idolater. If bought, the buyer can say: Am I worse than your first neighbor? You ought to be grateful to me that I have driven a lion out from your neighborhood. If sold, the law of preemption does not exist, as it applies only to the buyer, and he, the idolater, is not under the obligation of the above-cited verse ("do right and good"). To the seller, however, this does not apply, as he may say: No one can compel me to sell my estate. However, the seller is to be put under ban until he obliges himself to be responsible for any harm done by this buyer to the preëmptor.

To a pledged estate the law of preemption does not apply, as R. Ashi declared that he had heard from the elders of the city of Suria that therefore is a pledge called Mashkhantha, because the one to whom it is pledged is a neighbor. (See above.)

If one wishes to sell out his estate because it is placed at too great a distance, and to buy one near him, preemption cannot be claimed; and the same is the case if he wishes to sell out the estate near him because it is bad and to buy good ones. (The above-cited verse means to "do right and good" to one as long as he does no harm to another.) If it is sold for taxes or for the support of a widow or for burial, this law does not apply. The N'hardais said that in such cases the estate may be sold out without any proclamation; the same is the case if he sold it to a woman, to orphans, or to his partners. If he has neighbors in the city and neighbors in the field which are not considered preëmptors, the former have the preference. A scholar has the preference to a neighbor and even to a relative. The schoolmen questioned: How is it if he was both a neighbor and a relative? Come and hear what is written [Proverbs, xxvii. 10]: "Better is a near neighbor than a distant brother."

If the buyer is about to pay with current money, and the preëmtor wishes to pay with money which is of greater value but is not current, he loses his right. If the preëmtor sends money sealed (and the owner of the estate fears to open it, as it may not be the full value), and the buyer sends it open, he also loses his right. If the preëmtor says: I am going to try to get money, it is not to be taken into consideration; if, however, he says: I have money, and I am going to bring it, if he is a wealthy man the same may be postponed, but not otherwise. If the lots belong to one and the houses to another, the former has a right to prevent the sale of the latter, but not *vice versa*. The same is the case if the field belongs to one and the trees thereon to another.

If the preëmtor wants the lots for sowing, and the buyer wants it for houses, the latter has the preference. If there was a stone or a group of trees separating the two fields, if the preëmtor can in spite of this make one bed for sowing, attaching the two estates, preëmption may be claimed, but not otherwise.

If there were four preëmtors, one on each side, and one of them hastened and bought it, the sale is valid, but if all four appear at the same time, the estate must be divided diagonally.

MISHNA IX.: If one hires a field for a few years (less than seven) he must not sow flax in it; and he has also no right to cut branches off the sycamore tree for building purposes. If, however, he took it for seven years, he has a right in the first year to sow flax, and also to cut from the above-mentioned branches.

GEMARA: Said Abye: He has no right to the branches of the sycamore, but he has a right to the improvement of it. Rabha, however, maintains that he has no right even to this. An objection was raised from the following: When the term of his agreement to this field is at an end, the contents of the field must be appraised. Is it not as, *e.g.*, the improvement of the sycamore? Nay; it is meant the vegetables and herbs. If so, why then the appraisement? Let him take it out and go. If it happens before the market-day arrived? Come and hear. If the sabbatical year arrived, when the term of this field was not yet up, it must be appraised. [Does, then, the sabbatical year abolish the agreement? Read then the jubilee year; but even then the jubilee year abolishes only sales, but not hirings.] Read then: If the jubilee year arrived while the agreement is not yet up, it must be appraised. Now that the vegetables

should be appraised, does not apply here as in the jubilee year they are ownerless? You must therefore say that, *i.e.*, the improvement of the sycamore. Hence it is contrary to the statement of Rabha. Abye, in order that this shall not contradict Rabha, explains it thus: A jubilee year is different, as it is written [Lev. xxv. 33]: "Then shall the house that was sold," etc. The "house" which is sold . . . to be free, which signifies that a sale is to be returned, but not an improvement. Then let this law be inferred as a standard. Nay, there was a right sale, and the jubilee year is a command of the Lord, of which a hired article cannot be inferred.

R. Papa hired fields for pasture, and some trees sprouted in them, and when his term ended he demanded the improvement of them. Said R. Shesheth b. R. Idi to him: Would you also demand for the increase in thickness of a tree if there should be one? And he answered: Then it would be altogether different, as it is not usual to hire a field for this purpose, but I have hired this estate with this intention.

(Says the Gemara:) Is this in accordance with Abye, who said above that he has a right to the improvement of the sycamore? Nay, this may be explained also in accordance with Rabha, as there the hirer suffered no damage from the improvement of the sycamore. Here, however, there is damage, as the place where the tree grows he could not use for pasture. Said R. Shesheth to him: Then I have damaged you this little space, here is the value of it and go. And he answered: Nay, I would sow saffron in this place. Rejoined R. Shesheth: With your claim that you would sow saffron, you have made clear your intention that you did not wish to improve this estate with plants which should remain forever, but with such as you could take off at will; consequently your claim is for the value of the trees for fuel; then take this value and go.

R. Bibi bar Abye hired a field, and they surrounded this field with an embankment, and some trees grew up from it, and when his term was at an end he asked for this improvement. Said R. Papa to him: Because you are descendants of frail people you speak frail words; even R. Papa demands it (in the above) only because he has had damage, but here, what damage have you had?

R. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, all planters. Said R. Joseph: Hitherto I have had only one to rely upon,

and now I have five; each of them may rely upon the other, and my gardens may be neglected. Therefore he said to them: If you want to take the improvement of this year and resign, it is all right; if not, I will discharge you without any reward, as R. Jehudah—according to others R. Huna or R. Na'hman—said: If a planter dies his heirs may be discharged without reward. (Says the Gemara:) In reality it is not so.

There was a planter who said: If I do any damage I will be discharged. Finally he did. Said R. Jehudah: He may be discharged without any reward. R. Kahana, however, maintains he may be discharged, but he must be rewarded for what he has done. R. Kahana, however, admits that if it was so stipulated, then he is not to be rewarded. Rabha, however, says: Even then his saying was only an *asmakhta*, which gives no title. But why is this different from what we have learned above: If I neglect, etc. . . . I will pay with my best estate? There is no difference, as in both cases only the amount of the damage is paid; there he pays cash for the damage done, and here is deducted the amount of the damage, and the remainder must be paid to him for his reward.

Runia, the planter of Rabbina, did damage and was discharged; and he came to complain to Rabha, who answered him: He has done right; you have so deserved. And he rejoined: But he has not given me any notice. And Rabha said: That was not necessary at all. This decision is in accordance with his theory elsewhere, that an infant, teachers, planters, butchers, barbers, and the scribes of a city may be discharged without any notice; as there is the rule that damage which cannot be repaired annuls the agreement; and damage done by such people is counted under that category.

There was a planter who said: Give me what I am entitled to of the improvements, as I want to go to Palestine. When the case came before R. Papa b. Samuel, he decided that so should be done. Said Rabha to him: Was this improvement wholly due to his effort; did not the earth do its share? And the planter said, I don't ask for the whole improvement, but only for half; and Rabha rejoined: Until now the gardener took the half for his labor, but now when he leaves, the owner is compelled to hire another man and to pay him from his pocket. And R. Papa answered: I mean he shall take a quarter of the improvement and a quarter shall remain for future labor.

R. Ashi taught that the above decision that he shall take a

quarter means a quarter from the two-thirds profit that the owner of the vineyard takes for himself, which makes a sixth of the entire improvement (*e.g.*, if the improvement was worth six dinars, two of them are for the gardener, three for the owner, and one for the planter—as Minyumi bar R. Nehumi said: In the places where the planter takes half and the gardener a third, the planter who wishes to leave the work, his reward must be appraised, so that the owner shall not suffer damage; and therefore if the quarter in question means a sixth, as explained above, it is correct, but if it should be explained literally, a quarter of the whole improvement, then the owner would suffer a half-dankha damage. Said R. Aha b. R. Joseph to R. Ashi: Let the planter say to the owner: You give your share to the gardener, and with my share I will do as I please (*i.e.*, I will sell out to some one my share, and he will do his work without paying the gardener). And R. Ashi answered him: Leave thy objections for the section Holiness, which is so complicated that your objections will best fit there. Said R. Minyumi b. R. Nehumi: If an old group of vines, which do not bear fruit, remains in the vineyard, the planter has to receive half of it, as it is considered equal to those branches of the vineyard of which the planter takes half. If, however, a vineyard was flooded, and the vines were taken out or planted in another place, the planter gets only a quarter of it.

There was one who pledged his vineyard for ten years, and it became old in eight years. Abye said: The old vines are considered improvement, so that it belongs to the lender, and Rabha said: This is to be considered the principal amount which is to be sold, and for the amount to buy another vineyard with improvement, so that the lender shall use the fruit. (Come and hear an objection:) If a married woman inherits old vines and olives, they are to be sold for fuel and for the value estate is bought, and the husband loses the fruit. (Hence we see that it is considered principal amount, and this is an objection to Abye.) This Boraitha treats of a case, that where the woman inherited trees without estate, and if it would be allowed for the husband to consume them all, then nothing would remain from the principal amount, and this is against the law, as the principal amount of the woman must always remain to her benefit; so was it explained in Tract Khthubet.

There was a note in which was written years without a number. The landlord claims it means three, and the lender

claims it means only two; meanwhile the lender hastened and took the fruit from the third year also. Now the court has to decide who should be trusted. According to R. Jehudah the estate must be considered under the hazakah of its present possessor, and he should be trusted. According to R. Kahana, as the fruit there was already consumed by the lender, they must be considered under his hazakah, so that he must not pay for it, and so the Halakha prevails. But is it not decided elsewhere that the Halakha prevails in accordance with R. Na'hman, who holds that the estate must always be considered under the hazakah of its possessor? There was a case which could not be proved which of them was right; but here it can be proved by the witnesses who signed the note, and we do not care to trouble the court twice, *i.e.*, that if the court would now compel the lender to pay, and after he will bring witnesses that he was right, they would have to replevin from the borrower. If in case the broker claims for five years and the borrower claims three, and the note was lost, according to R. Jehudah the lender is trusted, *because* should he intend to make a wrong claim, he would say, I bought it, and as there is no note he could do so. Said R. Papa to R. Ashi: R. Zebid and R. Avira do not agree with the theory of R. Jehudah. Why so? Because this note, which was for collection, was undoubtedly taken good care of, and he has only concealed it, thinking, I will meanwhile use the fruit two years more.

Said Rabbina to R. Ashi: According to this theory the pledges of Sura, to which they usually write as follows: At the elapse of the time for which it is pledged this estate should become free without any payment. Now, if the lender should conceal the document and say, I bought it, should he also be trusted according to R. Jehudah's above theory? Is it possible that the rabbis should make such enactments by which the borrower should easily suffer? And he answered: There was the enactment of the sages, where the owner of the land should pay taxes and dig a trench around it. Now if this land was bought without a trench, and the taxes were unpaid, what could the buyer do? And he answered: He has to protest, in order that people shall know that it is a pledge only, and by not doing so he has done harm to himself.

If the gardener claims: For the half I worked, and the owner says for a third, who should be trusted? According to R. Jehudah, the owner; according to R. Na'hman, however, the cus-

tom of the country must be considered. The schoolmen were about to say that the above do not differ, as R. Jehudah speaks of a place where the gardener takes only a third. Said R. Mari, the son of Samuel's daughter, to them: So said Abye, Even at the place where the gardener takes half they differ, as according to R. Jehudah, even then the owner is trusted, as, should he like to make a wrong claim, he could say the gardener was hired for money for a certain time.

If orphans claim: *We* have made the improvements of this estate (and so no creditor has anything to do with it), and the creditor claims: It was improved by your deceased father, for whom is it to bring evidence? R. Hanina was about to say that the estate is to be considered under the *hazakah* of the orphans, consequently the creditor has to bring evidence. Said a certain old man to him: So said R. Johanan, that the orphans must bring evidence, because an estate which is to be taken away for debt is to be considered as if already done, and therefore *they* are considered the plaintiffs.

Said Abye: We have also learned the same in the Third Gate concerning a tree which was placed within fifty ells of the city, and it was doubted whether the city was built first or the tree was planted first. It was decided that the tree must be cut off at any rate. Hence, we see that because the tree is to be cut off it is considered as if already cut, and the evidence is only for the money (this will be explained in Third Gate in this case). The same is the case here; the note upon the estate is for collection, and it must be considered as if already collected, and the plaintiffs are the orphans. But how is it if the orphans have brought evidence? Again R. Hanina was about to say, that we give them estate for their claim. In reality, however, it is not so, as they get money, not estate for their claim; and this is to be inferred from the statement of R. Na'hman in the name of Samuel, who declares in the First Gate, page 216, that there are three to whom the improvement must be appraised, and they take money not estate for their claim. (See there.)

MISHNA X.: If one hires a field for the whole sabbatic season (*i.e.*, seven years, from the first year until the sabbatic year is past) for seven hundred zuz, the sabbatic year is included; but if for seven *years* the sabbatic year is to be excluded. A day-laborer has to collect his money the whole night after that day; for a night-laborer the whole day after it; if he was hired for a few hours, the night and day after. For a week,

month, year, or for the whole sabbatic season, if his term expired during the day, collects in the same day, and if at night, that night, and the whole day after.

GEMARA: The rabbis taught: Whence do we deduce that a day-laborer has to collect the whole night after? From Lev. xix. 13: "There shall not abide with thee the wages of him that is hired, through the night until morning." And whence that a night-laborer collects the whole day after? From Deut. xxiv. 15: "On the same day shalt thou give him his wages," etc.; but perhaps it means the reverse? Wages are paid only at the end.

The rabbis taught: As it is written: "There shall not abide with thee . . . through the night"; it is self-evident that, *i.e.*, until morning. Why, then, is it repeated? To teach that the transgression of this commandment comes and ceases with the first morning. But what does he transgress after that time? Said Rabb: He transgresses, You shall not keep wages. Said R. Joseph: Where is such a verse to be found? [Proverbs, iii. 28]: "Say not unto thy neighbor . . . when thou hast it by thee," etc.

The rabbis taught: If one told his neighbor to hire laborers for him, neither of them transgresses the above-cited verses. The owner, because he *himself* has not hired them; and the hirer, because they have not worked with him. However, this is only in case the hirer told the laborer: You shall get your payment from the owner. But if he told him: I will pay you, the transgression rests upon him. Jehudah b. Maramar told his servant: Go and hire laborers for me, and tell them that they will get their payment from the owner. Maramar and Mar Zutra, when they required laborers, hired one for the other, with the stipulation that they should get the payment from the owner. Said Rabba bar R. Huna: The inhabitants of Sura, who usually get their money on the market-day, do not transgress if they postpone the wages of their laborer until the market-day, as the laborers are aware of this. However, if they have money and do not pay, they transgress that of the Proverbs cited above.

*For a few hours, etc.* Said Rabb: If he was hired for hours of the day, he collects the whole day, and if for the night, he collects the whole night. Samuel, however, maintains that of the day collects at daytime, and that of the night collects at night and the whole day after. But does not our Mishna state "for a few hours, the night and day after," and also further

on, "for a week, month," etc., "if his term expires during the day, collects in the same day," etc., which is an objection to Rabh's statement? Rabh may say that in this case the Tanaim differ, as we have learned in the following Boraitha: A laborer of a few hours of the day collects the whole day; of the night, the whole night. So is the decree of R. Jehudah. R. Simeon, however, maintains that of the night collects the whole night and the day after. From this it was said that one who withholds wages transgresses the commandments of the following five verses: [Lev. xix. 13,] "Thou shalt not withhold anything from thy neighbor," [and *ibid.*,] "nor rob him"; [Deut. xxiv. 14,] "Thou shalt not withhold," etc., and in the above cited verse, "There shall not abide," etc.; and from [Deut. 15,] "On the same day," etc., and finally, that "the sun may not go down upon it." The laborers who finish at daytime, the night does not apply to them, and they who finish at night, to them the day does not apply.

Said R. Hisda: The Boraitha does not mean that one transgresses all the five negative commandments cited above, but the case of hiring is subject to them, that some of them transgress when the day is past, and some when the night is past. What is considered withholding and what robbery? Said R. Hisda: Come again, come again, is withholding; but if one says: "I have the wages, but do not want to give them to you," that is robbery.

R. Shesheth opposed from the following: What is considered withholding? That to which the Law prescribed an offering, which is equal to that, as, *e.g.*, to him who denies a money-deposit. (Hence "call again" is not under that category, as he does not deny.) Therefore, says Rabha, withholding and robbery are one and the same. And why is it written separately? That one, by doing this, transgresses two negative commandments.

MISHNA *XX.*: The commandment: "In the same day you shall give his wage," and also the negative, "there shall not abide . . . until morning," applies to men, cattle, and vessels; however, the transgression is only when the laborer demanded it, but not otherwise. If the owner has transferred him to the storekeeper or money-changer (and he does not pay him immediately) there is no transgression.

A laborer who claims his wages when his time for collection is not yet elapsed, collects his money with an oath (in case the owner says, You were paid already), but not after the lapse of

time. If, however, there are witnesses that he has demanded his money in due time and did not get it, he may collect it with an oath even thereafter.

To a proselyte who promised not to worship any more idols, and not to commit adultery, but not to conform to all other Jewish laws, the commandment, "Thou shalt pay him the same day," applies. However, not the negative commandment, "There shall not abide," etc.

GEMARA: According to whom is the statement of our Mishna? Not to the first Tana, nor according to R. Jose bar Jehudah of the following Boraitha: It is written [Deut. xxiv. 14]: "Of thy brethren," means to exclude idolaters; "or of thy strangers," means a real proselyte;\* "that are in thy land," means a proselyte who has only promised not to worship idols. This all treats of the wages of man; whence do we know that cattle and vessels are to be included? Therefore it is written, "in thy land"—*i.e.*, all which is in thy land—and for all of them the transgressions of the five cited verses apply. From this it was said that there is no difference between the wages of man, of cattle, and of hired vessels; the verse, "in the same day," etc., applies, and also the verse, "there shall not abide . . . until morning." R. Jose b. Jehudah, however, said, that to a proselyte of the second kind mentioned above, the first verse, "in the same day," applies, but not the other one; to cattle and vessels neither applies, but "Thou shalt not withhold" does apply.

Now if the Mishna would be in accordance with the first Tana, then the proselyte in question would be a difficulty; and if with R. Jose, then the cattle and vessels stand in the way. Said Rabha: Our Mishna is in accordance with a Tana of the disciples of R. Ishmael, who taught elsewhere the very same as our Mishna does.

What is the reason of the first Tana of the above Boraitha? He takes into consideration the analogy of the expression "hired," which is written in Deut. xxiv. 14 and Lev. xix. 13. As in the former case the law of robbery applies to a proselyte, cattle, and vessels, the same is the case there with wages. And R. Jose b. Jehudah does not take this analogy into consideration. But even then, why should not the law of "in the same day,"

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\* The Hebrew term for this is Garkho, literally, "thy coinhabitant." The word Gar, however, means also a proselyte. The Talmud explains it *thy* proselyte, *i.e.*, one who promised to keep the whole Jewish law.

etc., apply to cattle and vessels also? Taught R. Hanina: Because it is written [Deut. xxiv. 15]: "That the sun may not go down upon it, for he is poor." This signifies that this law applies only to those who can become poor or rich, excluding cattle and vessels, to which such conditions cannot apply. The first Tana, however, needs this verse, because of the law that if there were two laborers, a poor one and a wealthy one, and he has cash at that time to pay only one of them, the poor has the preference. And R. Jose maintains that this is deduced from *ibid.* 14. The first Tana, however, maintains that both of the above-cited verses are needed; one to give preference to the poor over the rich, and the other to give preference to the poor over the mendicant; and there is a necessity for both, as we could not infer one from the other. *E.g.*, if it were written that the poor laborer has preference over the mendicant, one might say that because the mendicant is not ashamed to demand it, and because the rich laborer is ashamed to make demand, the poor laborer is not to be preferred; and if it were written concerning a wealthy laborer and a poor one, one might say that because the wealthy man does not need it, and a mendicant needs it as much as the poor laborer, the latter is not to be preferred; therefore both are written.

What does R. Jose deduce from the words, "with thee," from the above-cited verse? That which R. Assi said: That even if he was hired only to press one cluster of grapes, if he was not paid in time, there is a transgression of "there shall not abide . . . till morning." The first Tana, however, maintains that this can be deduced from [Deut. xxiv. 15] "his soul longeth," etc., which signifies that the law applies to all things for which "his soul longeth."

It was said: From the words, "the soul longeth," etc., is to be inferred that one who withholds wages is considered as if he would take out the soul. And R. Huna and R. Hisda differed in the explanation of it. According to one it means the soul of the withholder himself, and according to the other the soul of the laborer. The reason of the former is [Proverbs, xxii. 22, 23]: "Rob not the poor . . . and despoil the life of those that despoil them"; the reason of the latter is [*ibid.* i. 19]: "It taketh away the life of those that own it."

*Is only when the laborer demanded it, etc.* The rabbis taught: One might say that he is guilty even when the laborer does not demand. Therefore it is written, "with thee," which means

with thy knowledge. (And if he does not demand, how should he know that he needs it?) And lest one say that he is guilty even if he has no cash at that time, therefore it is written, "with thee"; and lest one say that he is guilty even if he has transferred him to a storekeeper or money-changer (with his consent), therefore it is written "with thee."

The schoolmen propounded a question: If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? According to Rabha he may, and according to R. Shesheth he may not. Said Rabha: My statement is based upon the teaching of the Mishna, which states "there is no transgression," from which we infer that the transgression does not apply, but the obligation remains. R. Shesheth, however, interpreted this expression, that he is no more subject to that law.

R. Shesheth was questioned: Is piece-work subject to that law or not? Shall we assume that the master acquires title to the improvement of an article given him, and therefore when he returned it and was not paid, it is to be considered as a loan, for which there is no transgression; or that the master does not acquire title and it is considered labor? And R. Shesheth answered, It is subject. But there is a Boraitha that it is not. The Boraitha treats if he has transferred him to a storekeeper or money-changer.

*Collects his money with an oath.* For what purpose have the rabbis enacted the oath? Said R. Na'hman in the name of Samuel: These enactments were made to serve as a rule forever; in such cases as are biblical, the oath is to be taken by the employer, and the rabbis have removed the oath from him to the laborer for the sake of his livelihood (*i.e.*, that he should be able to take an oath immediately and collect the money).

But is it correct that for the sake of the laborer the right of the employer should be taken away? With this his right is not taken away, as it is more pleasant for the owner that the oath shall be given to the laborer, so that laborers shall not say that he pays his laborers with oaths. But why can you not say the reverse, that it may be more pleasant for the laborer if the employer takes the oath, that the employers shall not say that he is an unjust claimant? Therefore it must be said that the reason is, that because the owner has many laborers, it is easy for him to make a mistake in giving to one man instead of the other and swear falsely. But if so, why should not the laborer

be paid without any oath? To quiet the mind of the employer. But why should it not be enacted that the owner shall pay in the presence of witnesses? This would be too much trouble. But why should it not be enacted that it shall be paid in advance? Because it is convenient to both to have the payment after (for the owner, as perhaps he has not yet prepared it, and for the laborer, as he may lose it while laboring). If so, why should not the law be the same concerning a stipulation; and there is a Boraitha that if the specialist says: Your stipulation was to pay me two dinars for this my work, and the employer says only one, the plaintiff has to bring evidence (and if he has none the defendant takes an oath)? Stipulations are different, because they are usually borne in mind. But if the reason is because the owner is liable to make a mistake, why should not the same law apply even if the time has elapsed, and the statement of our Mishna is not so? It is because usually one would not easily transgress the law, "There shall not abide," etc. But was it not said that the owner is liable to make a mistake, as he has many laborers? This is before the time elapsed, but thereafter one is reminded of his duty. But is then the laborer suspicious of robbery? Concerning the owner there are two hazakahs; one that it is not likely that he would transgress by not paying, and the other that the laborer would not leave his wages without any claim. The laborer, however, has only one hazakah, that he would not demand robbery; therefore the preference is given to the employer.

*If there are witnesses, etc.* But is he not demanding now? Said R. Assi: The witnesses are that he did so in time. But perhaps he has paid him afterwards? Said Abye: The witnesses are to testify that he had demanded in time, and afterwards was not paid. But does this hold good forever (*i.e.*, that the laborer must always bring witnesses when he demands wages)? Said R. Huna bar Uqba: It means one day after time is elapsed, it was granted that he shall take it with an oath.

MISHNA XVII.: If a creditor has to pledge his debtor, he may do so only by court; and even then he has no right to enter his house, as it is written [Deut. xxiv. 11]: "In the street shalt thou stand." If he had mortgaged him two vessels, he may take only one; he also has to return a pillow for the night and the plough for the day. If the debtor dies, however, he has not to return it to his heirs. R. Simeon b. Gamaliel, however, said that even to the debtor himself he is not obliged to

return only the first thirty days; thereafter he may sell it out in the presence of the court.

GEMARA : Said Samuel: Even the messenger of the court has a right only to take away from him in the street, but not to enter his house.

But does not our Mishna state that he shall pledge him in the court, of which it is understood that the court may pledge him even in his house? In this case Tanaim differ, as we have learned from the following Boraitha: The messenger of the court who came to pledge a debtor must not enter the house, but stand on the street; and the debtor has to bring the pledge out to him, as it is written: "In the street shalt thou stand, and the man" (which may be interpreted the messenger of the court and the creditor). And another Boraitha: If the creditor himself comes to pledge him he must stand outside, and the debtor has to bring him the pledge, but if this is to be done by the messenger of the court, he may enter the house; however, he has no right to pledge cooking utensils, and he also must leave two beds, and a feather-bed for a wealthy man, and a bed and a mat of reeds for the poor one; for him, but not for his wife and children, as the cases of estimation and creditor are equal, concerning the essentials of the debtor, that it must be left to him.

The master said: Two beds, etc. For whom? It is not for his family, as it is stated "for him only." Why, then, are two beds necessary? One for eating and one for sleeping? And this is according to Samuel, who said: That to all sicknesses I know a remedy except to the following three: if one eats unripe dates on an empty stomach, if one wraps himself with a wet *μεθοιον* on the naked body, and if one takes his meal and immediately goes to sleep without walking four ells.

A disciple taught in the presence of R. Na'hman: We have to leave for the debtor if he owes to an ordinary creditor. The same essentials which are left by the collector in case of an estimation must be left also in case of a common creditor.

Said R. Na'hman to him: According to the law all his goods are sold out for the sake of the creditor, as, according to R. Simeon b. Gamaliel, after thirty days even the pillows must be sold out, and you say that here shall be applied the law of estimation.

But whence do we know that the Halakha prevails in accordance with R. Simeon b. Gamaliel? Perhaps it prevails in ac-

cordance with the first Tana of our Mishna. The disciple who taught in the presence of R. Na'hman said that so is the law, even in accordance with R. Simeon, and therefore R. Na'hman's objection. But perhaps even R. Simeon b. Gamaliel means to say that only things which are not absolutely necessary are sold, but not that which is. If it were borne in mind that so is the decree of R. Simeon, then all the things would be considered absolutely necessary for him, as Abye said that R. Simeon b. Gamaliel, and R. Simeon, R. Ishmael, and R. Akiba—all of them hold that in this respect all Israel are equal to princes. R. Simeon b. Gamaliel and R. Simeon in Tract Sabbath (pp. 228, 276), and R. Ishmael and R. Akiba in the following Boraitha: If one owed a thousand zuz and wears a stola worth almost the same price, it is to be removed and replaced by another one according with his dignity; however, it was taught in the name of Ishmael and R. Akiba that all Israel are fit for such a stola. But according to that which was borne in mind first, that we sell out only what is not necessary, it is correct with a pillow and a cover that they can be sold out, and cheaper ones bought. But a plough, to what purpose should it be sold, as all the ploughs are alike? Said Rabha b. Rabba, *i.e.*, in case his plough was a silver one. R. Haga opposed. Let the creditor say: Is it my duty to support you? Said Abye to him: Yea, it is so, as it is written [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God."

The schoolmen propounded a question: If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all sold out? Come and hear. Rabbin sent a letter: I have questioned this from all my masters, but there was no reply. The question, however, was as follows: If one vowed a mana for the preparation of a temple, and the treasurer came to collect this money from his property, does he take all that belongs to that man, or are the essentials to be left him? And to this question R. Jacob in the name of R. Pada and R. Jeremiah in the name of Ilpha said that it must not, because an *a fortiori* conclusion is to be drawn from a creditor who is obliged to return necessary things. Nevertheless, when, selling out, nothing is left, so much the more as in the case of the sanctuary, which has not to return, that nothing should be left. R. Johanan, however, maintains concerning estimation [Lev. xxvii.]: It is said, "a particular vow," to

the estimated value, and in case of estimation necessary things are left; the same is the case with the sanctuary.

Rabba bar Abuhu met Elijah at a cemetery of idolaters, and questioned him about the law in question in regard to a creditor, and he replied: There is an analogy of the expression "poor" used in both estimation [*ibid.*, *ibid.* 8] and creditor [Lev. xxv. 35], from which we infer that the same law is to be applied in both. Rabba then questioned him: Is not your master a priest, a descendant of Aaron? Why then do you stand on a cemetery? And he answered: It seems that you have never studied Section Taharot (purifications), in which there is a Boraitha: R. Simeon b. Johe said graves of idolaters do not defile, as it is written [Ezek. xxxiv. 31]: "And ye, my flock, the flock of my pasture, are men," which signifies that ye are called men, but not idolaters. Rejoined Rabba: My circumstances hardly allow me to study the four necessary sections (Festivals, Damages, Women, and Holiness); should I undertake to study the remaining two, which are not used at the present time? Elijah then asked, What does he mean? And he answered: I cannot make my livelihood. He then took him to paradise, and told him to take from the leaves lying on the floor in the garden, and he did so. While going out he heard some one saying: Who else has consumed his share in the world to come as Rabba did? He then shook his garment, and the leaves fell out. However, his garment retained the smell of them, and he sold it for three thousand dinars, and he donated them to his sons-in-law.

The rabbis taught: It is written [Deut. xxiv. 13]: "And if he is a poor man, thou shalt not lie down with his pledge," from which it is to infer that if he was rich he may. How is this to be understood? Said R. Shesheth, *i.e.*, if he is a poor man you must not lie down while his pledge is in your house, but if he is wealthy it does not matter.

The rabbis taught: If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning (pledging). What does it mean? Said Rabha: He must not pledge, and if he did so, he must return in case the pledge be taken thereafter; but if he took the pledge at the time the money was lent, he is not obliged to return; however, he transgresses the above commandments.

R. Shizby taught in the presence of Rabba: It is written

[Ex. xxii. 25]: "Thou shalt restore it unto him by the time the sun rises" \*—a garment used by day and pledged at night, and [Deut. xxiv. 13]: "Thou shalt punctually deliver him the pledge again, when the sun goeth down," means a garment which is used at night and was pledged in the day-time.

R. Johanan said: If the pledge was returned and the borrower died, the lender has a right to take it away from his children. An objection was raised. R. Mair said: Since it was pledged, why then the returning and pledging again? For the purpose that the sabbatic year should not make it free and it should not be considered personal property of his children in case of death. We see, then, that only in case it was pledged again this law holds good, but not if it is already in the possession of his children. Said R. Ada b. Mathna: Have you not tried to explain the curiosity of pledging and returning in some way? Explain it then thus: If it is to be returned, why then the pledging altogether? For the purpose that the sabbatic year shall not free it, and it shall *never* be considered the property of his children.

The rabbis taught: The verse [Deut. xxiv. 10]: "Thou shalt not go into his house to take his pledge," signifies that in his house only you shall not go; you may, however, go into the house of his surety, and it is so written [Proverbs, xx. 16]: "Take away his garment because he has been surety for a stranger." And it is also said [*ibid.* vi. 1-4]: "My son, if thou hast become surety for thy friend," which means, if you were surety, then give him what you have assured, and if you have no money, see some friend, who shall ask him to favor you. "Into his house you must not go" to regain money loaned, but you may do so, for the payment of your work (with your shoulders), for your ass, for your man, or your pictures if you have not made this as a loan to him.

MISHNA *XIII.*: A widow must not be pledged whether she is rich or poor, as it is written [Deut. xxiv. 17]: "Thou shalt not take in pledge the raiment of a widow."

GEMARA: The above is the decree of R. Jehudah. R. Simeon, however, said that only a poor one must not be pledged,

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\* Bo Hashemesh is the Hebrew term, which can be explained "the sun rises and also it goes down." (See Isaiah, lx., Gen. xxvii.; in both places the word Bo is used.) Hence, Shizby explains, the first the sun rises and the second it goes down.

because it must be returned (daily), and she would get a bad name among her neighbors, but to a rich one it does not matter. (The reason of that statement will be explained in the Third Gate in its proper place.)

MISHNA *XIV.*: One who pledged a nether and upper mill-stone transgresses a negative commandment and is guilty for two articles, as it is written [*ibid.*, *ibid.* 6]: "No man shall take to pledge the nether or the upper mill-stone" (and not this only, but all other articles which are for the preparation of food), "for he taketh a man's life to pledge."

GEMARA: R. Huna said: He who has pledged the nether in question is punished with stripes prescribed for a negative commandment twice, for two negative commandments, for the nether and for man's life; both the nether and the upper mill-stone, he is to be punished thrice. R. Jehudah, however, maintains for each part of them, but not for man's life, as that verse signifies that all other working instruments are under the same law.

There is a Boraitha in accordance with R. Jehudah: If one has pledged a pair of scissors, or a team of cows, he is guilty for two crimes. If, however, he pledge only one of them, he is guilty for one; and another Boraitha states: Lest one say that he is guilty for one crime even if he pledge a pair, therefore it is written: "He shall not pledge the nether or the upper mill-stone." As these are separate instruments used together, one is guilty for each of them separately; so also is the case with all other instruments of such a kind.

There was a man who pledged a butcher knife from his debtor, and Abye told him to return it, as it is an instrument used for preparing food; and for his debt he shall summon the butcher. Rabha, however, maintains that this is not necessary, as the pledger could claim, I bought it. Therefore the whole value of this pledge can be collected for his debt. But did not Abye hold the same theory? Why should this be so different from the case which happened in Nahardai, that goats have consumed peeled barley, and the owner of the barley took the goats for pledge, and has claimed more than the value of it, and the father of Samuel decided that he could collect from them the whole value? There it was different, as the barley was not for hire and loan, but the knife was for loan and hire. And R. Huna b. Abin sent a message: That all things which are for loan and hire, the one who claims that he has bought it is to be

trusted. But did not Rabha hold this theory? Has he not taken away from orphans a pair of scissors and a book of Hagada because they were for loan and hire? Rabha may say that a knife which became spoilt by frequent use one is particular not to lend.

## CHAPTER X.

### RULES CONCERNING HOUSES, GARDENS, AND OTHER REAL ESTATE OWNED IN PARTNERSHIP, AND WHAT MAY OR MAY NOT BE DONE IN PUBLIC THOROUGHFARES.

MISHNA I.: If one owns a house, the upper chamber of which belongs to another, and it falls, the wood, stones, and all other materials are to be divided accordingly (*i.e.*, he who has had a greater share in this building takes more). If some stones or bricks are still saved, an investigation is to be made, from which part of the building the stones were most liable to break; then the saved ones belong to that part which was not liable to break. If, however, one of them recognizes some of his stones, he may take them, provided he reckons them to his account.

GEMARA: From this statement it is to be investigated which part was more liable to break. We may infer that the cause of the ruin was known; then let us see if it was ruined because of the lower, which could not hold the upper part any longer; then the materials which lie in that place where the lower part was placed belong to its owner, and the materials beside it belong to the upper part; and if it was ruined by a storm or a stroke so that the upper part fell first, then there can be no doubt that the upper bricks are the broken ones. Why then the above statement? The Mishna treats in case the material was removed immediately after the falling occurred by the street cleaner, who paid no attention to the cause and the manner of its falling. If so, let us see under whose control they are now, and for the other party who is the plaintiff it is to bring evidence? Partners usually are not particular in such a case where the materials are placed.

*Provided he reckons them to his account.* Rabha was about to say that it must be divided according to the value, *i.e.*, that he must get broken ones for the amount of his partner's saved ones. Hence he is benefited by his claim that he recognizes the stones belonging to him. Said Abye to him: On the con-

trary, this will not benefit him, but damage, as according to his claim he recognized all that belongs to him; consequently all other stones do not belong to him, but to his partner. Therefore he said the Mishna meant that his partner shall take other saved stones according to the number he took by recognizing, and the benefit of such a claim is that if his bricks were of more value than the others his partner has nothing to say against the quality.

MISHNA II.: If the attic was ruined and the owner of the house declined to repair it, the tenant has a right to take his residence down in the house until his attic be repaired. R. Jose, however, said the owner has to repair the roof, and the tenant the rain leaders.

GEMARA: Does the Mishna mean entirely ruined, so that it is impossible to live in, or even if it was ruined in part, *e.g.*, four ells? According to Rabh, as he may use the lower part instead of the ruined, the greater part is meant, and according to Samuel, even a small part; it is disagreeable for one to live in two places. But let us see how the case was. If he hired *this* chamber, he may claim that so is his fate; if any chamber, let him hire another one for his tenant. Said R. Ashi: The case was that the owner said: "This upper chamber of *this* house is rented to you," and with such an expression he subjects the house to the chamber. This is as Rabin b. R. Ada reported in the name of R. Itzhak: It happened that one said to his neighbor, "I sell you this vine which is placed upon the persicum." Finally the latter was thrown out, and the case came before R. Hiye, who decided that the owner must furnish him with another persicum as long as the vine exists.

R. Abba b. Manuel questioned: When the tenant goes to dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together; as the owner may say, "I have not rented it to you, that I should be put out"? Should you decide that it is so, there would be another question. If there were two upper chambers, one above the other, and the lower became spoiled, should we say the tenant shall go to dwell in the upper one? Or he may claim: "I have rented to ascend one story, and am obliged to ascend two"? This question remains.

There were two who used to live in two upper chambers, one above the other, and the topmost became spoilt, and when the rain came through it did damage. Who is to make the re-

pairs? R. Hiye b. Abba said the occupant of the upper chamber, and R. Ilai, in the name of Hya b. Jose, said the occupant of the lower one. Shall we assume that the above differ the same as R. Jose and the rabbis of our Mishna differ (*i.e.*, R. Jose holds that the party doing the damage must remove the cause of it; and therefore he maintains that the tenant has to repair the rain leaders, and the rabbis hold that the injured party has to remove the cause of damage, and therefore they say that the owner has to repair even this). How could it be borne in mind that the sages of our Mishna differ in the case cited above? Are they not contrary to this opinion in the case of removing a tree (Baba Batra, p. 256)? It can only be said that the above Amoraim differ the same as the above Tanaim differ in the place cited. However, the point on which the Tanaim of our Mishna differ is this: Who must strengthen the roof? The rabbis hold, the smearing with clay of the roof and the rain leaders strengthens, hence, it is the obligation of the owner, and R. Jose holds that the above is only for straightening the roof? There shall not be any holes, and therefore it is the duty of the tenant to make the walking upon it more convenient.

But did not R. Ashi declare, when he was at the place of R. Kahana, that we all have decided that R. Jose admits that one is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things, so that the owner of it is not responsible for the carelessness of the injured one)? This is only as, *e.g.*, if one has planted a tree that did no harm when planted, but thereafter when the roots spread; but, *e.g.*, if one pours water, and while going downward it injures, he is responsible. Hence R. Hya's statement above that in such a case the lower one has to repair is not in accordance with R. Jose's theory. The case mentioned above was not direct, as he washed his hands at another place on the roof and the water rested there, and afterwards it flowed down from another place.

**MISHNA III.**: A house with an attic belonging to two persons which becomes ruined: the owner of the upper one requires the rebuilding and the owner of the house refuses; the former may rebuild the house and dwell in it until the latter returns him the expenses. R. Jehudah, however, maintains that even in such a case he is considered a tenant who must pay his rent (as

he has not his own house); therefore the owner of the attic rebuilds the house and attic, roofs it, and then he may make his dwelling down in the house until the expenses are paid.

GEMARA: Said R. Johanan: At three different places R. Jehudah teaches us that it is forbidden for one to derive benefit from the property of his neighbor, although the latter loses nothing; namely, in the case of our Mishna, also in case of changing the color by dyeing (First Gate, p. 216), and finally in case of the payment of a part of his debt, that R. Jehudah decrees that the note for collection loses its former force even if so stipulated. (Baba Batra.)

(Says the Gemara:) After all these statements we are not sure of such a decree by R. Jehudah, as all the three have their reasons; here because of spoiling the house while used, hence the owner loses by paying as for a new one; in the case of dyeing, because of changing of the agreement, and there is a Mishna above, p. 188, that he who does so must suffer; and also concerning the payment of a part of his debt, because it is only an *asmakhta*, which according to his theory above, p. 160, gives no title; but in cases where one does not suffer at all, and the other derived some benefit, may be that he (Jehudah) does not object.

R. A'ha b. Ada in the name of Ula said: If the owner of the lower part wants to rebuild his house with unhewn stones instead of hewn ones, his partner cannot protest (because the building with them is stronger than of the hewn ones), but if *vice versa*, he may prevent him. The same is the case with half bricks instead of whole ones (Rashi explains that between two half bricks, little stones and cork were laid, so that the wall became thicker by a span), and so it is with cedars instead of sycamores. To diminish the number of windows, and also the height of the building, his partner has no right to protest; if, however, the owner wanted to rebuild him the attic, just the reverse is the case, as the lower part may protest against a heavier attic which may damage his house. But how should the law be decided if both of them have no money to rebuild it? As R. Nathan of the following Boraitha: The owner of the lower part takes two shares and the upper one a third, and according to anonymous teachers the lower one takes three-quarters and the upper one one-quarter. And Rabba said: Practise as R. Nathan said, as he was a judge and always went into the deepness of the law. He reasoned that the upper building damages a third of the

lower (*i.e.*, that if the upper one were not upon it, it would hold a third more), therefore a third he must take.

MISHNA IV.: The same is the case with an olive-press which was placed under a garden. (Rashi explains that it means of two brothers who inherited them, one took the olive-press, the other the garden), and the roof of the press-house became ruined, the owner of the garden may descend and work up the bottom of the press-house for seed, until the roof of it will be repaired.

A wall or a tree which falls suddenly on a public thoroughfare, and causes damage, the owner is not responsible. If, however, time was given to him for cutting off the tree or the wall, and it fell after the time elapsed, he is responsible. If one's wall is placed at a neighbor's garden, and it falls (into his neighbor's garden), and he insists that the stones should be removed, the owner of them, however, says: "They are yours (as I renounce my ownership of them)," he is not to be listened to. If, however, the owner of the garden accepted his offer, and after a reconsideration he offers him his expenses for the removing, and repairs his stones, he is also not to be listened to.

The same is the case with a laborer who was hired to work with straw and hay, and when he demanded his pay, if the employer said to him: Take the articles in which you were engaged, for your payment, he must not be listened to. If, however, the laborer accepted, and after reconsideration the employer told him: Take cash for your hire and leave the articles to me, he must not be listened to.

GEMARA: Rabh said that the Mishna meant that the greater part of the roof was spoilt, but if only a small part, *e.g.*, four ells, he may work up his garden, and for the space spoilt he should use the bottom of the press-house. But Samuel said: It means even four ells, as it is disagreeable for one to sow in two places; and both cases of their differing were necessary to state; as if the former only, one might say that only concerning a dwelling Samuel disagreed with Rabh, and concerning sowing he agrees; and if the latter, one might say concerning sowing Rabh agrees with Samuel; therefore both were taught.

*If time was given.* What time is fixed for such a case by the court? Said R. Johanan: "Thirty days."

*If one's wall was placed, etc.* From the expression, "he offered him his expenses," it is to be understood that after the gardener has already removed; but if the reconsideration had

been before the removal, the owner of the wall has still the right to them, even if it was accepted by the gardener; why, then, let his estate give him title as R. Jose said above (p. 195). R. Jose's statement holds good when the former owner of that article agrees to give him title; here, however, he does not, as his former proposition was made only to win time for removing.

*The same is the case with a laborer, etc.* It was necessary for the Mishna to teach both cases, as in the former case only, one might say: It is because the gardener has nothing to demand from the owner of the wall; but in the latter case, where the laborer has to demand his money from the employer, he may be listened to, as people say: From a debtor of thine accept even bran in payment; and of this case only, one might say, as soon as he accepted, he acquires title, because he had money at his employer's, but in the former case the gardener does not acquire title, even if he accepted, as he has nothing to claim from the wall man; therefore both were necessary.

*He must not be listened to.* But have we not learned in a Boraitha that he may be listened to? Said R. Na'hman: This presents no difficulty. The Boraitha speaks of an ownerless article (which some one hired a laborer to remove without notifying him that it is such; and after he was through, he said, "Take this for your labor"), he may be listened to; and our Mishna treat of his own work. Rabha objected to R. Na'hman from the Boraitha above (p. 20), which states that if a laborer who was hired for the whole day finds an article, it belongs to his employer, from which it is easily understood that in our case, when he was hired to remove an ownerless article, the one who hired him acquired title to it, hence the drawing of the labor gives no title to him. Why then should the employer be listened to if he tells him to take it for his work? Therefore said R. Na'hman, both the Mishna and the Boraitha speak of ownerless articles; however, the cases are different, as the Mishna speaks of lifting (*i.e.*, that the laborer has removed the article), and the Boraitha speaks of looking (*i.e.*, that the laborer was hired to guard it by looking), so that there was no act on the part of the laborer which could give him title, and so neither of them has as yet acquired title; therefore the employer is listened to.

Said Rabba: If looking gives title to an ownerless article or not, the Tana'im of the following Mishna differ: The watchmen appointed to watch aftergrowth (of barley for omer) in the sab-

batical year, receive their wages from the treasure of the sanctuary. R. Jose, however, maintains, if one likes to do this for nothing he is allowed. Said the sages to him: According to your theory the omer would be brought from the donation of an individual. Is it not to assume that the point of their differing is whether looking gives title? According to the first Tana it does, and therefore if the watchman did it for nothing, he acquires title to it (as growth is ownerless in a sabbatical year); and R. Jose holds that looking does not give title, and the congregation acquires title on them when delivered to them. The saying of the sages is to be explained thus: According to your decision, that one can watch without any payment, in accordance with our theory that looking gives title, the omer could be brought by an individual?

Said Rabha: All agree that looking gives no title, and the point of differing is whether it is to be feared for mighty men, who would take possession of the aftergrowth, being ignorant that it belongs to a sanctuary. The first Tana holds that such is to be feared, and therefore the sages enacted that the watchmen shall get four zuz, so that it shall come to the ears of the above that the sanctuary laid its hand on it, and they will keep aloof from it. R. Jose, however, holds that such an enactment was not made, and the sages said to him: According to your decision the watchman remits his four zuz to the congregation (as we are sure that four zuz were enacted), and so his four zuz in which they had no share will always be considered his, and if the congregation buys daily offerings for it or other things, it is considered from an individual (which is not allowed), and so said Rabin when coming from Palestine, that R. Johanan is also of the opinion that the above is the point of their differing.

MISHNA V.: One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. Clay must not be soaked or bricks made upon a public thoroughfare; however, one may knead clay if needed for building, but not for bricks. For a building at a public place they must use the material as soon as it is brought, that it shall not be left there a long time, and even then, if they cause damage, the owner is responsible. R. Simeon b. Gamaliel maintains that one may prepare material for his building during thirty days.

GEMARA: Our Mishna is not in accordance with R. Jehudah, who said (First Gate, p. 66) that one may do so in the season,

Abye said: R. Jehudah with his decision just quoted, R. Simeon b. Gamaliel with his decision in our Msihna, and R. Simeon with his decision (First Gate, p. 145), that if damage was done there is no responsibility, are teaching that as soon as one placed his property with the permission of the court, he is not responsible for damage done by it.

The rabbis taught: If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible; the polisher to the drier, the latter to the carrier, and the latter to the builder, the builder to the architect; all of them are responsible if damage was done through the stones while under their control only, but as soon as one transfers them to the other, his responsibility ceases. If, however, the stones fall from the line they were placed upon, all of them are responsible. But have we not learned in another Boraitha that the very last one is responsible, while all others are free? This presents no difficulty. The first one speaks of a case where all of them undertook to build this building in partnership, and the second of a case where they were hired day laborers.

MISHNA VI.: When two gardens were placed one above the other, and some herbs were grown between them, according to R. Mair the herbs belong to the higher garden, and according to R. Jehudah to the lower one. Said R. Mair: (My decree is correct;) if the higher would remove his earth, there would be no herbs. Answered R. Jehudah: If the lower one would care to fill up his garden with earth to make it alike with the higher one, the same would be the case. Rejoined R. Mair: As either of them can prevent the other, we have to investigate from what sources the herbs exist. R. Simeon, however, maintains that the upper one may use that which he can reach with his hand, and the remainder belongs to the lower one.

GEMARA: Said Rabha: The sages of our Mishna do not differ concerning the rest of the herbs, that they belong to the upper one; they, however, do differ concerning the branches. R. Mair holds that the branches must go with the roots, and R. Jehudah does not agree with his theory, as we have learned in the following Boraitha, that that which comes out of the roots and the branches belongs to the owner of the estate. So is the decree of R. Mair. R. Jehudah, however, says that the branches belong to the owner of the tree. This is concerning business, and the same we have learned concerning Arla (the third year

of planting, of which the fruit is forbidden for use), and both cases were necessary to teach, as if only one case, one might say that they differ only concerning business, but not concerning prohibited things, and *vice versa*.

*R. Simeon maintains, etc.* Said the school of R. Janai: Provided he does not exert himself to reach them. Ephraim the scribe, the disciple of Resh Lakish, said in the name of his master, that the Halakha prevails in accordance with R. Simeon. This was reported to the King Sabura,\* and he said: We are grateful to R. Simeon for his decision.

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\* Rashi explains that the King Sabura was acquainted with the Jewish law, as well as with the Persian, and Thosphoth agree with him.

E. x. J. W.  
12/27/55





